United States Court of Appeals

for the Second Circuit

APPENDIX

75-7380

United States Court of Appeals

FOR THE SECOND CIRCUIT

In the Matter of the Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER and China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability.

SINGAPORE NAVIGATION COMPANY, S.A., CHINA MARINE INVESTMENT CO., LTD., CHINA OVERSEAS NAVIGATION CO., LTD.,

Plaintiffs-Appellants,

MEGO CORP., ET AL., JOSEPH MARKOVITS, ET AL., UNITY SEWING SUPPLY CO., ET AL., INTERNATIONAL SEAWAY TRADING CORP., ET AL., KATONE CORP., ET AL., SPARTAN INDUSTRIES, ET AL., ALSTER IMPORT CO., LO-E MANUFACTURING CORP.,

Cargo Claimants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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New York, New York 10005

(Names and addresses of attorneys continued on inside cover.)

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Bigham, Englar, Jones & Houston
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New York, New York 10038

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Witnesses

The following excerpts from the Trial Transcript:

Richard D. Herlihy, Operations Manager, Gannet Freighting, Inc. for Plaintiffs-Appellants.

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202 " 212	183a

David W. Quinn, President and Business Agent, Halifax Longshoremens' Association for Plaintiffs-Appellants

87 through 115 — 194a

Ronald B. Smith, Former President of the International Longshoremens' Association, St. John, New Brunswick for Plaintiffs-Appellants.

116 through 125 — 223a

Kenneth R. Schnare, ex-trustee, Local 269, Halifax Longshoremen's Union, for Claimants-Appellees

220 through 245 — 233a

Colloquy with the Court

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Richard D. Herlihy		
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David William Quinn		
Direct	87	194a
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Ronald Babington Smith		
Direct	116	223a
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Claimants Witness		
Kenneth Ralph Schnare		
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EXHIBITS

Excerpts from the pre-trial testimony of the following witnesses:

T. Y. Lin, former Managing Director of China Marine Investment Company Limited and former President of Singapore Navigation Co., S.A. for Plaintiffs-Appellants (Pl. Ex. 34)

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74	"	77	285a

Kenneth D. Honegger, Vice-President, Colley Motorships Ltd., Montreal, for Plaintiffs-Appellants (Pl. Ex. 32)

3	through	7	289a
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57	"	68	331a

Timm B. W. Paulsen, Operating Manager, Colley Motorships Ltd., Montreal, for Plaintiff-Appellants (Pl. Ex. 43)

3	through	54	343a

Arthur Cadotte, Secretary-Treasurer, Local 375, International Longshoremen's Association, Montreal for Claimants-Appellees (Cl. Ex. C)

61	through	89	396a

Jean P. Walsh, Business Agent, Local 1739, International Longshoremen's Union, Quebec City, for Claimants-Appellees(Cl. Ex. B)

4	through	18	425a

John D. Milton, Manager, Valleyfield Dock & Terminal Co., Ltd., for Claimants-Appellees (Cl. Ex. AD)

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Captain Alexander S. Kerr, Berthing Superintendant, Harbours Board, Montreal, (Cl. Ex. C)

3 through 36	453a
39 " 40	487a
47 " 57	489a

Louis Cote, Dock Superintendent, National Harbours Board, Port of Quebec (Cl. Ex. B)

22 through 38	500a

Captain Mou-Chiang Yang, Master of the S.S. Singapore Trader (Pl. Ex. 15)

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79 " 80	523a
87 " 88	525a
188 " 189	527a

CIVIL DOCKET

UNITED STATES DISTRICT COURT

1a

Jury demand date:

72 Civ. 1275

C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
IN THE MATTER OF THE Complaint of SINGAPORE NAVIGATION COMPANY, S.A., as owner of the S.S."SINGAPORE TRADER" and CHINA MARINE INVESTMENT CO. LTD. and CHINA OVERSEAS NAVIGATION CO., LTD. Plaintiffs for Exoneration from or Limitationof Liability pltffs & 3rd pty. pltffs. -v- PITTSTON STEVEDORING CORP. and MURPHY PACIFIC MARINE SALVAGE COMPANY 3rd pty. defts. (12-18-73) MURPHY PACIFIC MARINE SALVAGE COMPANY 4th Party Pltff. Vs ERICSON MARINE INC., 4th Party Deft.(12-10-74) 9-6-73	For plaintiff: Kirlin Campbell & Keating 120 Broadway NY 10005 732-5520 ATTYS. FOR DEFTS. Lilly Sullivan & Purcell (Alter Impo 17 Battery Pl.,NYC 10004 - 269-0061 Symmers Fish & Warner(3rd pty. Pitts 345 Park Ave.,NYC 10022 - PL 1-6h0 For defendant: Donovan Donovan Ma & Walsh(for claima 161 William St.,N) 964 3553 (& for K Bigham Englar Jones & Houston (for I Trading Corp. of America, M.Pressnel and J.Zweibel) 99 John St.NY 10038 Cichanowicz & Callan (for Internatl Trading Corp.) 80 Broad St.NY 10004 ~~Lilly Sullivan & Purcel (for Alter Import Co., Inc.) 26 10004 269-0061~~ ~~Hill, Betts & Nash (for Ogdensburg Port Authority) 26 Broadway NY 100~~ CICHANOWICZ & CALLAN 80 Broad St.,N.Y.C. 10004 344-70

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC	
J.S. 5 mailed x	Clerk		8/27/72	Kirlin, C.	15	
			3/18/22	U.S.Trea		15
J.S. 6 mailed	Marshal					
Basis of Action: Exoneration fro r Limitation of Liability	Docket fee					
	Witness fees					
ction arose at:	Depositions					

72 Civ. 1213 In the matter of the complaint of Sanspeed Navigation Co., et al

CIVIL DOCKET

Judge Brieant

DATE	FILINGS—PROCEEDINGS
	ATTORNEYS FOR DEFTS.
	Boal Doti & Larsen-- (3rd pty. deft. Murphy Pacific Marine Salvage Co.)
	225 Broadway, N.Y.C. 10007 233-2500
	Hill Rivkins Carey Loesberg & O'Brien (cargo claimants Joseph Markovits,
	96 Fulton St., N.Y.C. 10038 2336171

D. C. 110

on Proceeding
Singapore Navigation Co.S.A. owner of S.S."Singapore Trader"

Dec'd 1st J.
72 Civ. 127

PROCEEDINGS	Date Order & Judgment Not
Filed complaint- and Stip. for Costs ($250.National Surety Corp.)	
Filed Affidavit of Value and Affidavit of Pending Freight	
Filed Notice of Assignment to Judge Palmieri,	
Filed Stipulation for Value ($408,598.34 National Surety Corp.) Approved as to form and sufficiency. Palmieri, J.	
Filed Order approving Plaintiffs' stipulation for Value, directing issuance of NOTICE and restraining suits. Palmieri, J. (Publish in New York Law Journal) (Ret. 5/9/72)	
Filed letter from Langfelder,Homma & Carroll re: Objection to pltfs'.request for exoneration and/or limitation of liability.	
Filed Notice to claimants of complaint for Exoneration from or Limitation of Liability, with proof of publication.	
Filed Consent & Order. Ordered that the time for all claimants to file claims & to answer the complaint for exoneration,etc., to 8/9/72 exte Palmieri J. (mailed notice)	
Filed ANSWER of Reliance Trading Corp. of American to complaint.	BEJ&H
Filed Claim of Reliance Trading Corp. of America.	C&C
Filed Claim of International Seaway Trading Corp.	"
Filed ANSWER " " " " " to complaint.	LS&P
2 Filed ANSWER & Claim of Alster Import Co., Inc.	
2 Filed Claim of Gannet Freighting (China Marine Investment Co.) - (Notation time extended ti 8/9/72).	
Fil edd Claimants Reliance Trading Corp. of America request for production of documents from pltffa Singapore Nav. Co. S.A. China Marine Investment Col & LTd. China Overseas Co. to res pohd within 10 days.	
2 Filed Consent Order that the time for all claimants to file claims and to answer he complaint for esoneration from or limitation of liability is extended Aug 9-72. Frankel, J.	
Filed ANSWER of Katone Corp. to complaint.	BEJ&H
Filed Claim of Katone Corp.	
Filed Claim of Ogdensburg Bridge and Port Authority.	HB&N
2 Filed Claim of Azad International Inc.	
2 Filed letter from Langfelder, Homma & Carroll, Inc. together with formal claim of their losses.	
2 Filed letter from Advanced Affiliates, Inc. - containing their Claim in the Amt. of $569.05 with documents in support of their claim.	
Filed Claim of Plymouth Wholesale Corp. Import Div.	
Filed Claim of LO-E Mfg.Corp.	
Filed Claimant's Unity Sewing Supply Co and Natl Council of Young Israel,Inc. ANSWER to Complaint.	MBR
Filed Claim of Unity Sewing Supply Co and Natl Council of Young Israel,Inc.	
Filed Claimant Consent and Order extending time to file claim and answer the Complaint for exoneration from or limitation of liability returnable in 30 days -from 11/9/72 to 12/9/72.Gurfein,J.	
Filed Claimants Claims.	DDM&H
Filed Claimant's ANSWER to Complaint.	
Filed Claimants,Joseph Markovits, Inc.et al.	HHW&C
Filed Claimant Joseph Markovits,Inc,et al's ANSWER to Complaint.	
2 Filed Claim Sheet from Plymouth Wholesale Corp.	
3 Filed ORDER. Ordered that Spartans Ind.Foreign Operations,Div.of Arlen Realty & Development Corp.be and is hereby permitted to file this claim nunc pro tunc as of 5/19/72& Affdvt of Charles J. Meyers.M/N.	
3 Filed Claim of Arlen Realty & Development Corp.	
Filed Pltff's List of Claims pursuant to Supplemental Rule F(6)FRCP.	
Filed stip. and order substituting CICHANOWICZ & CALLAN a s attys. for Ogdensburg	

Cont'd. on page 2

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Civ. 1275 Limitation proceeding PALMIERI

CIVIL DOCKET Singapore Navigation Co.,S.A. owner of S/S Singapore Trader.

DATE	FILINGS—PROCEEDINGS
	(Cont'd from page 1) Bridge and Port Authority. PALMIERI,J.
Dec. 11-73	Filed affdvt. & notice of motion for certain cargo claimants permitting
	Brinn's China & Glassware Co. to become a claimant-ret. 12-21-73.
Dec.14-73	Filed memo of law in support of motion of Brinn's China.
Dec. 21-73	Filed memo endorsed on motion filed 12-11-73--Motion granted. No opposit
	So ordered--Brieant,J.-mailed notice.
Dec. 18-73	Filed 3rd pty. complaint & issued 3rd pty. summons
Dec. 27-73	Filed deft's notice of change of address
Jan. 3-74	Filed claims of Brinn's China & Glassware Company,Inc.--Nunc Pro Tunc
Jan. 10-74	Filed 3rd pty. summons & return, served Pittston Stevedoring Corp. by R.P
	Chiarillo-1-3-74--served Murphy Pacific Marine Salvage Co. by
	Matthew F. Cinquegrana-1-3-74.
Jan. 16-74	Filed interrogatories of certain cargo claimants to pltffs.
Jan. 24-74	Filed cargo claimants Joseph Markovits,et al-notice to take deposition of
Jan. 24-74	Filed counterclaim of Singapore Navigation Co.,S.A.
Jan. 24-74	Filed ANSWER of 3rd pty. deft. Murphy Pacific Marine Salvage Co. to 3rd
	complaint
Jan. 25-74	Filed notice of change of firm name
Jan. 25-74	Filed notice of appearance of 3rd pty. deft. Pittston Stevedoring Corp.
Feb. 1-74	Filed ANSWER of 3rd pty. deft. Pittston to 3rd pty. complaint
Feb. 1-74	Filed 3rd pty. deft's(Pittston) notice of appearance.
Feb. 1-74	Filed 3rd pty. deft's(Pittston) notice to produce for inspection
Feb. 1-74	Filed 3rd pty. deft's (Pittston) interrogs.
Feb. 1-74	Filed 3rd pty. deft's (Pittston) request for production of documents.
Feb. 1-74	Filed 3rd pty. deft's (Pittston) interrogs. to each claimant
Feb. 19-74	Filed stip & order extending time of claimants to answer counterclaims
	3-15-74 -Brieant,J.
Feb. 27-74	Filed stip. & order extending time of claimants to answer interrogs. and
	produce documents,etc. to 4-2-74--Brieant,J.
Feb. 27-74	Filed claimant's (Lo-E Mfg. Corp.) answers to interrogs.
Mar.1-74	Filed pltffs answers to interrogs.
Thu 28-74	Pre-trial Conference held
Mar.8-74	Filed Stip and order extending time for UNITY Sewing Supply Co. to answer interrogatories until 4-2-74. BRIEANT,J.
Mar.8-74	Filed 3rd-pty defts Murphy Pacific's notice to produce documents for inspection & copying.
Mar.8-74	Filed 3rd-pty defts Murphy Pacific request for production of documents, etc.

cont'd on page 3

	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
-74	Filed 3rd pty. deft's (Murphy) interrogatories.		
-74	Filed ANSWER of claimants to counterclaims		DDM&W
-74	Filed 3rd pty. deft's (Murphy) notice of examin. before trial		
-74	Filed 3rd pty. deft's (Murphy) interrogs.		
-74	Filed ANSWER to counterclaims--by cargo claimant Alster Import Co.,Inc.		LS&P
-74	Filed stip. & order extending time of claimants Mego Corp.,et al- to answer interrogs. & produce documents requested by Pittston to 5-2-74-Brieant,J.		
-74	Filed claimant's (Unity Sewing Supply) answers to interrogs.		
-74	Filed claimant's(Alster Import) answer to the demand for discovery & inspection by Pittston Stevedoring		
-74	Filed claimant's(Alster Import) answer to demand for discovery of Murphy Pacific		
-74	Filed answers of claimant Unity Sewing Supply to interrogs. of 3rd pty. deft. Pittston		
74	Filed Stip and order extendint time to answer interrogatories by 3rd. pty deft. until 7-8-74. BRIEANT J.		
4	Filed Lo-E Manufacutring answer to demand for discovery and inspection.		
4	Filed copy of above entry.		
4	Filed Lo-E Manufacturing Asnwer to counterclaims.		RR&F
	Filed by 3rd-pty deft(Pittston) affdvt & notice of motion compelling defaulting claimants to answer interrrogs.		
74	Filed memo of law in support of motion.		
-74	Filed by certain cargo claimants answer to request for production of claimant's documents.		
-74	Filed by certain cargo claimants, answer to interrogs.		
-74	Filed by claimants, answer to counterclaims.		
-74	Filed pltffs trial memo in behalf of Singapore Nav., China Marine Investment & China Overseas Nav.		
-74	Filed by cargo claimants (Alster Import Co.) answers to interrogs. of 3rd-pty defts.		
-74	Filed by claimants (Joseph Markovits, Inc., etal) answers to interrogs.		
74	Filed transcript of record of proceedings, dated MAY 20, 22, A14.		
74	Filed transcript of record of proceedings, dated MAY 15, 1974		
-74	Filed Stip & Order extending to 10-8-74 time for claimants (Mego Corp.) to answer interrogs, & produce documents requested by 3rd-pty deft(Murphy Marine Salvage.)		
-74	Filed transcript of record of proceedings dated May 14, 1974.		
74	Filed cargo claimants' brief after trial.		

//////////// Con't on Page #4

CIVIL DOCKET

DATE	PROCEEDINGS
Sep.12-74	Filed 3rd-pty deft (Murphy Pacific) affdvt & notice of motion for leave to amend its answer to assert a cross-claim against Ogdensburg Bridge, & serve a fourth-party complt upon Ericson Marine, Inc. Ret. 9-25-74.
Sep.12-74	Filed 3rd-pty deft (Murphy Pacific) memo of law in support of motion.
Sep 17-74	Filed Proposed Findings of Fact on behalf of cargo Claimants.(filed in 71 Civ 5321)
Sep 17-74	Filed Proposed Conclustions of Law on behalf of Cargo Claimants.(filed in 71 Civ 5321)
Sept 17-74	Filed Reply brief on behalf of Certain Cargo Claimants.(filed in 71 C 5321
Sep 16-74	Filed Stip. & Order that he deposition & chart listed are admitted in to evidence....Brieant, J.
Sep.24-74	Filed by claimant (Ogdensburg) affdvt in opposition to 3rd-pty defts motion to amend its answer so as to assert therein a cross-claim against claimant Ogdensburg Bridge & Port authority.
Sep.30-74	Filed by 3rd-pty deft (Murphy Pacific) reply affdvt to opposition affdvt of D.P. Costigan.
Oct 17-74	Filed Stip & Order extending to time of Claimants to answer interrogs. and produce the documents requested by 3rd party Deft, Murphy Pacific Marine Salvage Co., to and including Jan 6, 1974. SO ORDERED-BRIEANT,J.
Nov 25-74	Filed MEMO ENDORSEMENT on 3rd-pty Deft (Murphy Pacific) Affdvt & notice of motion filed 9-12-74. Motion Granted. Pleadings shall be served within thirty (30) days. This determination is without prejudice to any affirmati laches which may be pleaded. SO ORDERED -- BRIEANT, J. (n/m)
Dec 9-74	Filed AMENDED ANSWER TO 3rd Pty. Complt.of Murhpy Pac. Marine Salvage.
Dec 10-74	Filed FOURTH-PTY COMPLAINT OF MURPHY PACIFIC SALVAGE CO.-Summons issued.
Dec 31-74	Filed ANSWER to crossclaim of Murphy Pacific Marine Salvage Co.
Mar 26-75	Filed Agreed Findings of Fact.
Mar 26-75	Filed Suppl. Conclusions of aw.....So Found. 3-26-75..Brieant,J. mn
Mar 26-75	Filed Findings of Fact on behalf of Cargo Claimants as found by the Court .....I find the foregoing facts except as stricken out and initialed. See Memorandum Decision herein dated 3-26-75...Brieant,J.
Mar 26-75	Filed Additional Findings of Fact proposed by pltffs. as found by the Cou .....I find the foregoing facts except as striken out and initialed. See Memorandum decision herein dated 3-26-75..Brieant,J. mn

Continue on page #5

D. C. 110

FILINGS—PROCEEDINGS	AMOUNT REPORTED IN DISBURSEMENT RETURNS
Filed Memorandum Decision#42106.....Conclusion; Pltffs' petition for exoneration of limitation of liability is denied because of the unreasonable deviation herein before found, which occured at the direction of the owner. Those cargo claimants damaged as a result of the stranding shall have judgment in the amounts to be determined at a separate trial to be held at a date to be scheduled following appellate finality of the interlocutrory judgment to be entered hereon, which is appealable pur. to 28 U.S.C. § 1292(a)(3)...The foregoning, together with the "Agee Facts" and certain requested spec Findings of Fact submitted, which this Court has signed simultaneously herewith, shall constitute the Findings & Conslusions in this case pur. to Rule 52,FRCP.....	
Settle an Interlocutory judgment on 5(Five days notice.....Brisant,J.mn	
Filed Cargo Claimants' Proposed Add'l Findings of Fact.	
Filed Brief before trial on behalf of certain cargo claimants.	
Filed Conclusions of Law proposed by pltffs.	
Filed Pltffs' reply memo to cargo Claimants' brief after trial	
Filed Pltffs' Post Trial Memo of Law.	
Filed Interlocutory Judgment.....Ordered that pltffs' petition for exoneration or limitation of liablity and pltffs' counterclaim for General Average payments from cargo claimants are denied on account of the unreasonable deviaition which occurred at the direction of the shipowners' president and cargo claimants damaged as a result of the stranding described in Pltffs' petition shall have judgment and shall recover of pltffs' their respective damages in the mounts tobe determined at a separate trial, and costs ~~and~~ that the aforesaid separate trial to ascertain and compute the amount of said damages due cargo dlaimants of pltffs shall be held at a date to be scheduled following appellate finality of this interlocutroy judgment, and that the 2 3rd pty complts and the 4th party complt, which have been servered shall be heard at the same time as the hearing on damages, or otherwise as the Court may hereafter direct....Brisant,J. mn Judgment Entered 5-21-75-Clerk ent 5-21-75	
Filed memo-End on back of Interlocutory Judg. ent 5-21-75...Whether cargo claimants are entitled to interest, and if so, for what period and in what amount are issued regarded by the Court as a part of damages, and reserved for future determination. Striking out the reference thereto on the within interl. judg. is not regarded as a determination thereof on the merit....Brisant,J. mn	
Filed Pltffs & 3rd pty Pltffs' Notice of Appeal to USCA from Interlocutory judg.. .....ent & fld on 5-21-75.....Copyies Mailed on 6-25-75 to:Donovan, Donovan,Maloof & Walsh; Hill, Rivkins, Warburton, McGown & Carey; Symmers, Fish & Warner; Boal Doti & Larsen; Wofdsey, Certilman, Haft, Snow & Becker; Cichanowicz & Callan; Bigham, Englar, & Jones & Houston; Charles J. Meyers, Esq.; Lilly, Sullivan & Purcell; Reichbart, Reichbar & Feit.	

Con't on Page #6

72 Civ 1275 SINGAPORE NAVIG. CO., et al

DATE	PROCEEDINGS
7-11-75	Filed 3rd-pty deft (Murphy Pacific) affdvt & Show Cause Order granting leave to serve a fourth-party complt. Ret. 7-11 BRIEANT, J
7-14-75	Filed Memo-End. on show cause order of 7-11-75. Motion granted the time within which service may be effected is enlarged a period from this date, of 60 days.....So Ordered, BRIEANT, J m/n
7-16-75	Filed pltff's affdvt and Notice of Motion for an order permitting relief from restraining order heretofore entered in this matter on 3-28-72 by the Court and permitting to pltff to continue with the action commenced in the Supreme Court of the State of New York, County of Kings.

ms of 7/25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed March 27, 1972

In the Matter of the Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER and China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability.	72 Civ. 1275 (ELP) In Admiralty COMPLAINT

MG. ATTY'S No. 10-3

1. This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

2. At all the times hereinafter mentioned, plaintiff Singapore Navigation Company, S.A., was and now is a corporation organized and existing under the laws of the Republic of Panama. Plaintiff China Marine Investment Co., Ltd. was and now is a corporation organized and doing business under and by virtue of the laws of the British Crown Colony of Hong Kong, having an office and principal place of business there. Plaintiff China Overseas Navigation Co., Ltd. was and is now a corporation organized and doing business under and by virtue of the laws of the Republic of China and having an office and principal place of business in Taipei, Taiwan. At all material times, plaintiff, Singapore Navigation Co., S.A., owned and operated the SS SINGAPORE TRADER and plaintiffs, China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., acted as its agents in connection with various matters pertaining to the operation of the vessel. If, however, it should be found

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that plaintiff, China Marine Investment Co., Ltd. and/or plaintiff, China Overseas Navigation Co., Ltd., manned, victualed and navigated the vessel by their own procurement and at their expense, which is denied, said plaintiffs are entitled to invoke the provisions of 46 U.S.C. §183 et seq.

3. The steamship SINGAPORE TRADER is a single screw steel vessel built by the North Carolina Ship Building Company, in 1944; and is 459 feet 1 inch in over all length, 63 feet 2 inches in breadth and 28 feet 7 inches in maximum draft and of 8172 gross and 4823 net tons register. Her port of registry is Singapore. Plaintiffs used due diligence to make the said vessel seaworthy in all respects, fully manned, equipped and supplied and her holds and other parts fit and safe for the reception, carriage and preservation of the goods and, at the time of the incidents hereinafter described and at and before the commencement of the voyage on which the steamship SINGAPORE TRADER was engaged, the vessel was tight, staunch, strong, properly manned, equipped and supplied and her holds and all parts of the vessel in which goods were carried were fit and safe for their reception, carriage and preservation and in all respects seaworthy.

4. On about August 13, 1971, at the port of Hong Kong, the steamship SINGAPORE TRADER commenced loading cargo for the port of New York and sailed for New York on August 22, 1971. The vessel arrived at New York on September 27, 1971 and on September 28, 1971 commenced discharging cargo. Approximately 20% of her cargo was discharged prior to the commencement of the International Longshoremens' Association's strike on October 1, 1971. Arrangements were made to discharge

the vessel's remaining cargo at the port of Detroit after all nearby non-United States ports could not or refused to handle the cargo remaining on the steamship SINGAPORE TRADER. Notice of the foregoing was given to all persons interested in the cargo and the vessel sailed for Detroit on October 8, 1971. While en route to Detroit, and on October 15, at approximately 0419 hours the steamship SINGAPORE TRADER ran aground and became stranded in the St. Lawrence Seaway off Clayton, New York, causing serious damage to the vessel and preventing further prosecution of the voyage. Some of the vessel's cargo was removed by professional salvors and barged to Ogdensburg, New York. The vessel was thereafter removed from the strand by said salvors and towed to Ogdensburg, New York where her remaining cargo was discharged and the voyage terminated there on or about December 13, 1971. As a result of the foregoing, expenses for salvage and expenses of a general average nature were incurred in order to preserve and protect the venture. Notice was given to all persons interested in the cargo advising them of the stranding and that their cargo was available for delivery at Ogdensburg. The vessel was thereafter towed to Montreal, where she has remained.

5. The aforesaid stranding and all losses, damages, injuries and destruction were not caused by or due to any fault, neglect or want of due care on the part of the plaintiffs or of the steamship SINGAPORE TRADER, or of any persons for whom the plaintiffs were or are responsible, but were caused solely by obstructions to and perils of navigation and of the sea, but if they were caused by any fault, which is expressly denied, they were caused solely by and due solely to the act, error or

default of the Master or Mariners in the navigation or in the management of the vessel, for which the plaintiffs are not under any liability, and plaintiffs specifically reserve the right to assert any other defenses they may have, including those set forth in the Carriage of Goods by Sea Act.

6. The aforesaid stranding and any and all losses, damages, injuries or destruction resulting therefrom were done occasioned and incurred without the privity or knowledge of the plaintiffs and without the privity or knowledge, at or prior to the commencement of the voyage upon which the steamship SINGAPORE TRADER was engaged, of her master or of plaintiffs' superintendents or managing agents.

7. As a result of said stranding and events occurring after said stranding, the steamship SINGAPORE TRADER has sustained damage and the owners of cargo laden thereon have allegedly sustained damages in a total amount not yet determined. As of March 27, 1972 plaintiffs have received notice of suits and claims for loss or damage in the total amount of $355,000. Plaintiffs have also received many claims with no amounts stated and plaintiffs estimate and believe that the aggregate amount of all suits and claims will exceed the amount or value of the interest of the plaintiffs in the steamship SINGAPORE TRADER and her pending freight at the conclusion of the aforementioned voyage. The value of the vessel at the conclusion of the aforesaid voyage is $45,000.00 and the amount of pending freight is $363,598.34, or a total of $408,598.34.

8. This complaint is filed within six months from the date plaintiffs received the first written notice of claim or suit from any claimant following the aforesaid stranding.

9. Plaintiffs herewith deposit with the Court as security for the benefit of claimants a stipulation for value in the sum of $408,598.34 plus interest at 6% (six percent) per annum from the date of said stipulation, said sum not being less than the amount or value of plaintiffs' interest in said vessel and her pending freight at the end of the aforesaid voyage as set forth in the affidavits filed herewith.

10. Plaintiffs claim exoneration from liability for any loss, damage, injury or destruction arising from said stranding, or done, occasioned or incurred on the said voyage, and all claims therefor. Plaintiffs allege that they have valid defenses thereto on the facts and on the law. Plaintiffs further claim the benefit of limitation of liability provided for in §§4283, 4284, 4285 and 4289 of the Revised Statutes of the United States (46 USC §§183-185 and 188), and the various statutes supplemental thereto and amendatory thereof, and to that end plaintiffs herewith deposit with the Court, as security for the benefit of claimants, a stipulation for value with interest as aforesaid, with sufficient surety, for the amount or value of its or their interest in the steamship SINGAPORE TRADER and her pending freights, as provided by the aforesaid statutes, by the Federal Rules of Civil Procedure, including the Supplemental Rules for Certain Admiralty and Maritime Claims, and by the rules and practice of this Honorable Court. If it later appears that plaintiffs are or may be liable, which is denied, and the amount or value of plaintiffs' interest in the said steamship SINGAPORE TRADER and her pending freights as aforesaid is not sufficient to pay all losses in full, then

claimants shall share pro rata in the aforesaid sum, saving to claimants any rights of priority they may have as ordered by this Court, or as provided by the aforesaid statutes, by the Federal Rules of Civil Procedure including the Supplemental Rules for Certain Admiralty and Maritime Claims, and by the rules and practice of this Honorable Court.

WHEREFORE, plaintiffs demand:

(1) That this Court make an order approving the above-described stipulation for value, with surety, deposited with the Court by the plaintiffs, as security for the amount or value of plaintiffs' interest in the aforesaid vessel and her pending freight;

(2) That this Court issue a notice to all persons asserting claims with respect to which the complaint seeks limitation admonishing them to file their respective claims with the Clerk of this Court and to serve on the attorneys for the plaintiffs a copy thereof on or before a date to be named in the notice and that if any claimant desires to contest either the right to exoneration from or the right to limitation of liability, he shall file and serve on the attorneys for the plaintiffs an answer to the complaint on or before the said date, unless his claim has included an answer, so designated;

(3) That this Court enjoin the further prosecution of any and all actions, suits, or proceedings already commenced and the commencement or prosecution thereafter of any and all actions, suits, or proceedings, of any nature or description whatsoever in any jurisdiction against plaintiffs, as aforesaid, or against the steamship SINGAPORE TRADER or against any

property of the plaintiffs, except in this action, to recover damages for or in respect of any loss, damage, injury or destruction caused by or resulting from the aforesaid stranding or done, occasioned or incurred on the aforesaid voyage;

(4) That this Court adjudge that plaintiffs are not liable to any extent for any loss, damage, injury or destruction or for any claim therefor in any way arising out of or resulting from the said stranding or anything done, occasioned or incurred on the said voyage;

(5) That if plaintiffs shall be adjudged liable, then that any such liability be limited to the amount or value of the plaintiffs' interest in the said vessel and the pending freight at the end of the voyage on which said events occurred and that plaintiffs be discharged therefrom upon the surrender of such interest, and that the money surrendered, paid, or secured to be paid as aforesaid be divided pro rata according to the hereinabove mentioned statutes and rules among such claimants as may duly prove their claims before this Court, saving to all claimants any priorities to which they may be legally entitled, and that judgment may be entered discharging plaintiffs and the SINGAPORE TRADER from all further liability;

(6) That plaintiffs may have such other, further, or different relief as may be just.

KIRLIN, CAMPBELL & KEATING

By _____
A Member of the Firm
Attorneys for Plaintiffs
Office & P. O. Address
120 Broadway
New York, New York 10005
(212) 732-5520

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

WALTER P. HICKEY, being duly sworn, deposes and says:

I am an attorney and a member of the firm of Kirlin, Campbell & Keating, attorneys for plaintiffs herein.

I have read the foregoing complaint and know the contents thereof and the same is true to my knowledge based on information and belief.

The source of my information and the grounds for my belief are documents and records in plaintiffs' files.

The reason this verification is made by me and not by plaintiffs, Singapore Navigation Company, S.A., China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., is that plaintiffs are foreign corporations, none of whose officers are now within the City of New York.

Walter P. Hickey

Sworn to before me this
27 day of March, 1972

LEWIS G. LORENZ
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1973

Notary Public

MG. ANN'S NO. 10-81B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of the Complaint :
of :
Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER, and China Marine Investment Co., Ltd. and China Overseas Navigation Co. Ltd., Plaintiffs, for exoneration from or limitation of liability. :

72 Civ. 1275 (E.L.P.)
In Admiralty

ANSWER

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CNF ✓

DWM ✓

WJFH ✓

The answer of Reliance Trading Corporation of America to the complaint of Singapore Navigation Company, S.A. et al, alleges upon information and belief as follows:

FIRST: Admits the allegations contained in article 1 of the complaint.

SECOND: Denies any knowledge or information sufficient to form a belief as to the information set forth in article 2 of the complaint.

THIRD: Admits that the S.S. SINGAPORE TRADER is a single screw steel vessel built by the North Carolina Shipbuilding Company in 1944, and is 459'1" in length overall, 63'2" in breadth, and 28'7" in maximum draft, and of 8,172 gross and 4,823 net tons register, and that her home port of registry is Singapore, and denies each and every other allegation contained in article 3 of the complaint.

C-77889

FOURTH: Admits that on or about October 15, 1971 the S.S. SINGAPORE TRADER ran aground and became stranded

in the St. Lawrence Seaway off Clayton, New York, and that some of the vessel's cargo was removed by professional salvors and barged to Ogdensburg, New York. Denies that expenses of a general average nature were incurred, and denies any knowledge or information sufficient to form a belief as to each and every other allegation contained in article 4 of the complaint.

FIFTH: Denies each and every allegation contained in article 5 of the complaint.

SIXTH: Denies each and every allegation contained in article 6 of the complaint.

SEVENTH: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in article 7 of the complaint.

EIGHTH: Admits the allegations contained in article 8 of the complaint.

NINTH: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in article 9 of the complaint.

TENTH: Denies that plaintiffs are entitled to the benefits afforded by the provisions of sections 4283 and 4289, inclusive, of the Revised Statutes of the United States.

WHEREFORE, claimants demand (1) that the complaint herein for exoneration from or limitation of liability be dismissed; (2) that this Honorable Court adjudge that the stranding and all damages, losses and injuries resulting

therefrom were caused and occasioned by reason of the plaintiffs' failure to exercise due diligence to make the SINGAPORE TRADER seaworthy at and prior to the inception of the voyage; (3) that these claimants be awarded their damages with interest and costs, and (4) that this Court grant such other and further relief as may be just and proper in the premises.

BIGHAM, ENGLAR, JONES & HOUSTON

By _____
Attorneys for Claimants
Office & P.O. Address
99 John Street
New York, N.Y. 10038

OFFICE COPY

Kirlin, Campbell & Keating
120 BROADWAY
NEW YORK, N. Y. 10005

Sp. Clk's Sy]

10-8-72

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the	: 72 Civ. 1275 (E.L.P.)
Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER, and China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability.	: ANSWER

DWM

AB

DWM

JJH

Claimant INTERNATIONAL SEAWAY TRADING CORP., for its answer by CICHANOWICZ & CALLAN its attorneys, alleges on information and belief as follows:

FIRST: It denies that it has any knowledge or information thereof sufficient to form a belief as to the allegations contained in Paragraphs "1", "2", "3", "4", "7", "8" and "9" in the Complaint, except admits the admiralty and maritime jurisdiction of this Honorable Court.

SECOND: It denies the allegations contained in Paragraphs "5", "6" and "10" of the Complaint, except admits that as a result of the deviation and grounding and stranding, the cargo was damaged and/or not delivered, late delivered, or short delivered.

THIRD: That the deviation and the running aground and stranding was due to the unseaworthiness of the SS SINGAPORE TRADER which was known to her owners and operators, and to the fault and neglect of the plaintiff and the SS SINGAPORE TRADER.

WHEREFORE, claimant prays that the petition for

C-77859

exoneration from and/or limitation of liability be denied, that plaintiff be ordered to pay claimant for its loss and damage and for such other and further relief as to the Court may appear to be just and proper in the premises.

CICHANOWICZ & CALLAN

By _____
A Member of the Firm
Attorneys for Claimant,
INTERNATION SEAWAY TRADING CORP.
Office & P.O. Address:
80 Broad Street
New York, N. Y. 10004

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

VICTOR S. CICHANOWICZ, being duly sworn, deposes and says:

That he is a member of the firm of CICHANOWICZ & CALLAN, attorneys for the claimant INTERNATIONAL SEAWAY TRADING CORP., that he has read the foregoing Answer and knows the contents thereof, and that same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

That the reason this verification is made by deponent and not by claimant, is that the claimant is a corporation and has no offices within the County of New York.

Victor S. Cichanowicz

Sworn to before me this
9th day of May, 1972.

Barry R. Horwitz

C.....1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

OFFICE C... Mlin. Campbell & Keating 120 BROADWAY NEW YORK, N. Y. 10005

In the Matter of the Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER and China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability.	:	72 Civil 1275 (ELP) ANSWER AND CLAIM

ALSTER IMPORT COMPANY, INC., by its attorneys, LILLY, SULLIVAN & PURCELL, answering the complaint herein, for exoneration from or limitation of liability, alleges, upon information and belief, as follows:

1. Admits the allegations contained in paragraph numbered "1" of the complaint.

2. Denies sufficient knowledge and information to form a belief as to each and every allegation contained in paragraphs numbered "2", "4", "7", "8" and "9" of the complaint.

3. Denies the allegations contained in paragraphs numbered "3", "5", "6" and "10" of the complaint.

FURTHER ANSWERING THE COMPLAINT, AND SETTING FORTH ITS CLAIM AS PROVIDED IN RULE F INCLUDING PARAGRAPHS FOUR AND FIVE THEREOF OF THE SUPPLEMENTAL RULES OF CERTAIN ADMIRALTY AND MARITIME CLAIMS OF THE FEDERAL RULES OF CIVIL PROCEDURE, THE CLAIMANT, ALSTER IMPORT COMPANY, INC., ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

1. The claimant, ALSTER IMPORT COMPANY, INC., is a domestic corporation duly organized and existing under

and by virtue of the laws of the State of New York, and engaged in the business of importing and manufacturing pearls and costume jewelry.

2. The claimant was the consignee of 88 cartons of novelty costume jewelry shipped aboard the SS SINGAPORE TRADER which sailed from Hong Kong on or about August 22, 1971. These items were evidenced by bill of lading #409 which was issued by the SS SINGAPORE TRADER and/or its owners, agents and servants.

3. Out of the above shipment the claimant was tendered delivery of only 77 cartons: 9 cartons were tendered upon the vessel's arrival in New York on or about September 27, 1971; subsequently, 68 cartons were tendered to the claimant, pursuant to the above mentioned bill of lading, after said cartons were removed from the vessel following the alleged stranding which is the subject of the complaint.

4. As a result of the above, the claimant being the lawful consignee of the goods covered by the above-mentioned bill of lading sustained damages due to the total loss of 11 cartons, as well as pilferage and shortages in the other 77 cartons of novelty costume jewelry which was shipped aboard the SS SINGAPORE TRADER, to its damage in excess of $2,200.00.

5. The claimant has further sustained as damages sums now due or as may be claimed to be due for a contribution of proportionate share of cargo in General Average incident to the alleged stranding of the SS SINGAPORE TRADER on or about October 15, 1971. The amount of said damages is not expected to exceed $2,500.

WHEREFORE, the claimant, ALSTER IMPORT COMPANY, INC., respectfully requests this Court to grant a judgment in its favor dismissing the plaintiff's complaint for exoneration from or limitation of liability, and further that a claim by ALSTER IMPORT COMPANY, INC., be presented against the plaintiff's herein in the aggregate amount of $4,700 with lawful interest and costs thereon.

Yours, etc.,

LILLY, SULLIVAN & PURCELL
Attorneys for Alster Import
Company, Inc.

By s/ [illegible]
A Member of the Firm
Office and P.O. Address
26 Broadway
New York, New York 10004

TO:

KIBLIN, CAMPBELL & KEATING, ESQS.
120 Broadway
New York, New York 10005

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

RITA ALSTER, being duly sworn, deposes and says:

That she is the Secretary-Treasurer of ALSTER IMPORT COMPANY, INC., a corporation, and the claimant herein; that she has read the foregoing Answer and Claim and knows the contents thereof and that the same is true of her own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, she believes it to be true.

That the reason this verification is made by deponent is that ALSTER IMPORT COMPANY, INC., is a corporation and deponent is an officer thereof, to wit: its Secretary-Treasurer.

That the sources of deponent's information and grounds of her belief as to all matters not stated in the Answer and Claim to be alleged upon her own knowledge, are reports made to her by employees and records of said corporation.

s/ RITA ALSTER
RITA ALSTER

Sworn to before me this
8th day of May, 1972.

s/ Sidney Gins
#31-6456300

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER and China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., Plaintiff, for exoneration from or limitation of liability.	:	72 Civil 1275 (ELP)
	:	INTERROGATORIES

ALSTER IMPORT COMPANY, INC., as a claimant in this proceeding, propounds the following interrogatories upon the plaintiff pursuant to Rule 33 of the Federal Rules of Civil Procedure which are to be answered in full and under oath. These interrogatories are deemed to be continuing.

1. With regard to the stranding alleged in the complaint, state in detail:

(a) What occurred.

(b) Exact location where it occurred.

(c) The exact time it occurred.

(d) The last port of call of the vessel immediately prior to this incident.

(e) The draft of the vessel including forward, aft and mean at the time of this incident.

(f) Describe in detail what petitioner claims caused or contributed to the occurrence.

2. Was the vessel under the command of a pilot? If so, the name and address of the pilot and the name and address of the pilot organization involved should be listed.

3. List the names, addresses, ratings, license with place and authority of issue or other qualifications of each and every member of the crew and ship's officer on board SS SINGAPORE TRADER at the time of the stranding

Also indicate the country which issued each and every license and/or certificate.

4. When, where and for what periods of time was the vessel last drydocked? Further, what repairs, alterations or other work was performed and accomplished during such time.

5. List all other repair work which was performed aboard the vessel with regard to its propulsion systems and steering apparatus within the past five years.

6. Was the weather, tide or other natural cause a factor in the stranding of the vessel? If so, state the weather, wind, tide, atmospheric, lighting and other natural conditions or hazards at the time.

7. Was any other vessel involved in or otherwise responsible for this incident? If so, state: the vessel's name and port of registry, the name and address of the owner and any other information which will identify this vessel and which will indicate how it was involved or related to this incident.

8. State the name and address of all claimants and their attorneys, the nature and value of all claims whether property loss, property damage, personal injury, death, cargo loss, ship repairs and relates expenses against the SS SINGAPORE TRADER and/or its owners, operators or servants as a result of this incident.

9. State the present disposition of the vessel including its condition, location, whether or not it is in service, what repairs were completed subsequent to this incident and the value of all repair work completed or to be completed to render it seaworthy.

10. State when this accident first came to the attention of any of the plaintiffs or their representatives; who it was reported by and to whom it was reported.

11. State in detail the information the plaintiffs or any of the plaintiffs' representatives have or are aware of relating to the accident, to show how the accident occurred and the facts leading up to the accident and set forth all information whether or not it is conflicting.

12. Have the plaintiffs or others acting on the plaintiffs behalf obtained from any person or persons any oral or written report, statement, memoranda or testimony concerning the accident involved in this petition.

13. If so, what is the name, last known address and present whereabouts, if known, of such persons.

14. If so, where, when and by whom (state name and address) was such reports, statements, memoranda or testimony obtained or made.

14. State when the last annual or special survey of the vessel was conducted; the bureau responsible for said survey; where said survey took place and describe the results of said survey or furnish copies of surveys.

15. State the present custodian and location of each such statement, report, memorandum or testimony.

16. Did the United States Coast Guard, or any other governmental agency, or joint American and Canadian government, or agency of the Canadian government conduct any investigation as to the alleged casualty? If so, state the nature of, when, where and by whom such investigation was conducted. Further state the present location of all of statements taken and transcript of the testimony given

during said hearing or investigation.

17. Is petitioner, or anyone within the knowledge of petitioner or his representative, in possession of any photographs or the area and/or equipment involved in this case? If so, state:

(a) the date when such photographs were taken;

(b) the name and address of the party taking them;

(c) the objects or subjects of the particular site or view such photographs represent;

(d) the present whereabouts of the photographs and the names and addresses of the possessor or custodian thereof.

18. If petitioner, or any of his representatives, or anyone within the knowledge of the petitioner or their representatives, in possession of any blueprints, diagrams, charts, plans and/or drawings of the area and/or equipment involved in this case? If so, state:

(a) the date or dates such diagrams, blueprints, charts, plans and/or drawings were made;

(b) the names and addresses of the parties making them;

(c) whether these diagrams, blueprints, charts, plans and/or drawings were made by representatives or persons acting in behalf of petitioners.

(d) whether the name of an architect or engineer appears on any of these diagrams, blueprints, charts, plans and/or drawings and, if so, give his name and address;

(e) the present whereabouts of these items and the names and addresses of the possessor or custodian thereof.

19. Does petitioner claim that any governmental agency, United States or Canadian, failed to maintain navigation aids or other expected assistance to mariners which caused or contributed to the occurrence described

in the petition and if so, specify each said failure in detail, identifying the agency responsible.

Dated: New York, New York
May 8, 1972.

Yours, etc.,

LILLY, SULLIVAN & PURCELL
Attorneys for Alster Import Company, Inc.

By /s/ George W. Sullivan
A Member of the Firm
Office and P.O. Address
26 Broadway
New York, New York 10004

J8624 AP

MG. ATTY'S No. 10-893

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of the Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER, and China Marine Investment Co.,Ltd.,and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability	:	72 Civ. 1275 (E.L.P.)
	:	In Admiralty
	:	ANSWER

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DWM
LJB
JJH
WPH

The answer of Katone Corporation to the complaint of Singapore Navigation Company, S.A. et al, alleges upon information and belief as follows:

FIRST: Admits the allegations contained in article 1 of the complaint.

SECOND: Denies any knowledge or information sufficient to form a belief as to the information set forth in article 2 of the complaint.

THIRD: Admits that the S.S."SINGAPORE TRADER" is a single screw steel vessel built by the North Carolina Shipbuilding Company in 1944, and is 459'1" in length overall, 63'2" in breadth, and 28'7" in maximum draft, and of 8,172 gross and 4,823 net tons register, and that her home port of registry is Singapore, and denies each and every other allegation contained in article 3 of the complaint.

FOURTH: Admits that on or about October 15,1971 the S.S."SINGAPORE TRADER" ran aground and became stranded in the St. Lawrence Seaway off Clayton, New York, and that

C-77884

SWS

Received 2/3/72

some of the vessel's cargo was removed by professional salvors and barged to Ogdensburg, New York. Denies that expenses of a general average nature were incurred, and denies any knowledge or information sufficient to form a belief as to each and every other allegation contained in article 4 of the complaint.

FIFTH: Denies each and every allegation contained in article 5 of the complaint.

SIXTH: Denies each and every allegation contained in article 6 of the complaint.

SEVENTH: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in article 7 of the complaint.

EIGHTH: Admits the allegations contained in article 8 of the complaint.

NINTH: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in article 9 of the complaint.

TENTH: Denies that plaintiffs are entitled to the benefits afforded by the provisions of sections 4283 and 4289 inclusive, of the Revised Statutes of the United States.

WHEREFORE, claimant demands(1) that the complaint herein for exoneration from or limitation of liability be dismissed; (2) that this Honorable Court adjudge that the stranding and all damages, losses and injuries resulting therefrom were caused and occasioned by reason of the

plaintiffs' failure to exercise due diligence to make the S.S."SINGAPORE TRADER" seaworthy at and prior to the inception of the voyage; (3) that these claimants be awarded their damages with interest and costs, and (4) that this Court grant such other and further relief as may be just and proper in the premises.

BIGHAM, ENGLAR JONES & HOUSTON

By _____

Attorneys for Claimant
Office & P. O. Address:
99 John Street
New York, New York 10038
732-4646

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of Singapore Navigation Company, S.A., as Owner of the Steamship SINGAPORE TRADER and China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability.

72 Civ. 1275 (E.L.P.)

ANSWER

UNITY SEWING SUPPLY CO., and THE NATIONAL COUNCIL OF YOUNG ISRAEL, INC. by their attorney, MELVIN L. LEBOW, answering the Complaint herein, for exoneration from or limitation of liability, alleges, upon information and belief, as follows:

FIRST: Admits the allegations contained in Paragraph "1" of the Complaint herein.

SECOND: Denies that it has knowledge or information sufficient to form a belief as to the information contained in Paragraph "2" of the Complaint herein.

THIRD: Admits that the S.S. SINGAPORE TRADER is a single screw steel vessel built by the North Carolina Shipbuilding Company in 1944, and is 459' 1" in length overall, 63' 2" in breadth, and 28' 7" in maximum draft, and of 8,172 gross and 4,823 net tons register, and that her home port of registry is Singapore, and denies each and every other allegation contained in Paragraph "3" of the Complaint herein.

FOURTH: Admits that on about August 13, 1971, at the port of Hong Kong, the Steamship SINGAPORE TRADER commenced loading cargo for the port of New York and sailed for New York on August 22, 1971, and that on October 15, 1971, said Steamship ran

aground and became stranded, and denies that it has knowledge or information sufficient to form a belief as to each and every other allegation contained in Paragraph "4" of the Complaint herein.

FIFTH: Denies each and every allegation contained in Paragraphs "5" and "6" of the Complaint herein.

SIXTH: Denies that it has knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs "7", "8" and "9" of the Complaint herein.

SEVENTH: Denies the allegations contained in Paragraph "10" of the Complaint herein, except admits that plaintiffs claim exoneration from liability for any loss, damage, injury or destruction arising from said stranding, or done, occasioned or incurred on the said voyage, and all claims therefor.

WHEREFORE, claimant prays (1) that the complaint herein for exoneration from or limitation of liability be dismissed; (2) that this Honorable Court declare that the stranding and all damages, injuries and losses resulting therefrom were caused and occasioned by reason of the plaintiffs' failure to exercise due diligence to make the S.S. SINGAPORE TRADER seaworthy at and prior to the commencement of the voyage; (3) that the plaintiffs be ordered to pay this claimant for its damages with interest and costs; and (4) that this Court grant such other relief and further relief as may be just and proper in the premises.

s/ Melvin L. Lebow

MELVIN L. LEBOW
Attorney for Claimant
55 Broad Street
New York, New York 10004

TO: Clerk of the Court

KIRLIN, CAMPBELL & KEATING, ESQS.
Attorneys for Plaintiffs
120 Broadway
New York, New York 10005

GM-71-683
DLM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mallin, Grossman & Kar
120 BROADWAY
NEW YORK, N. Y. 100..

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In the Matter

of

INDEX NO.
72 Civ. 1275 ELP

The Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER, China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability.

ANSWER OF MEGO CORP ET AL

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Claimants, as set forth on the Schedule attached, by their attorneys, Donovan, Donovan, Maloof & Walsh, allege, upon information and belief, as follows:

FIRST: Admit the allegations of paragraph "ONE" of the Complaint.

SECOND: Deny that any plaintiffs are entitled to invoke the provisions of 46 U.S.C. §183 et seq., and deny knowledge or information sufficient to form a belief as to the remainder of the allegations of paragraph "TWO" of the Complaint.

THIRD: Deny the allegations of paragraphs of the Complaint numbered "THREE", "FIVE" and "SIX".

FOURTH: Admit that the SS SINGAPORE TRADER loaded claimants' cargo at Hong Kong, destined for New York, and that part only of her New York cargo was discharged at New York, and that the plaintiffs decided to discharge the remaining cargo at Detroit and that the ship stranded in the St. Lawrence Seaway off Clayton, New York, and there was a need for salvage

expenses, but except as expressly admitted, deny the remainder of the allegations of paragraph "FOUR" of the Complaint.

FIFTH: Admit that the stranding caused damage to the ship and her cargo, but except as expressly admitted, deny knowledge or information sufficient to form a belief as to the remainder of the allegations contained in paragraph "SEVEN" of the Complaint.

SIXTH: Deny knowledge or information sufficient to form a belief as to the allegations of the Complaint numbered "EIGHT" and "NINE".

SEVENTH: Deny that plaintiffs are entitled to exoneration from liability or that they have any valid defenses or that they are entitled to limit their liability and except as expressly denied herein, deny knowledge or information sufficient to form a belief as to the deposit or securities which have been made in Court and denies the remainder of the allegations contained in paragraph "TEN" of the Complaint.

AS AND FOR A FIRST, SEPARATE, AND COMPLETE DEFENSE OR CLAIM

EIGHTH: The stranding was due to the fault, neglect and want of care on the part of the shipowner and/or managerial personnel employed by it.

AS AND FOR A SECOND, SEPARATE, AND COMPLETE DEFENSE OR CLAIM

NINTH: The SS SINGAPORE TRADER was sent to sea by the plaintiffs in an unseaworthy condition without

the exercise of due diligence on the part of the shipowner or its managerial personnel and with the plaintiffs' privity and knowledge.

AS AND FOR A THIRD, SEPARATE AND COMPLETE DEFENSE OR CLAIM

TENTH: Plaintiffs in this case are guilty of having deviated from the contract of carriage in that they wilfully breached the contract in a serious way by nominating as an alternate port to New York, the port of Detroit rather than the nearest non-U.S.A. port as was agreed on the face of the contracts of carriage.

ELEVENTH: Said deviation was the proximate cause of the disaster in this case.

WHEREFORE, claimants pray that the complaint be dismissed and that they be awarded the sums stated in the claims served and filed in this action, together with interest, costs and disbursements.

Dated: New York, New York
December 1972.

DONOVAN, DONOVAN, MALOOF & WALSH

By: _____
A Member of the Firm
Attorneys for Claimants
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161 William Street
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(212) 964-3553

TO:
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120 Broadway
New York, New York 10005

82953-RPH

MG. ATTY'S No. 10-5912

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120 BROADWAY
NEW YORK, N. Y. 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of the	:	72 Civ. 1275 (ELP) In Admiralty
Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER, and China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability.	:	A N S W E R

The answer of JOSEPH MARKOVITS, INC., et al., Claimants listed in the Claim which is being filed concurrently herewith, to the complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER, for exoneration from or limitation of liability, respectfully allege as follows:

FIRST: Claimants admit the allegation contained in paragraph 1 of the complaint herein.

SECOND: Claimants admit that Singapore Navigation Company, S.A. was a corporation organized and existing under the laws of the Republic of Panama and that said corporation owned the S.S. SINGAPORE TRADER, but except as so specifically admitted, deny knowledge or information sufficient to form a belief as to each and every other allegation contained in paragraph 2 of the complaint herein.

THIRD: Claimants admit that the S.S. SINGAPORE TRADER is a single screw steel vessel, is 459 feet 1 inch in overall length, 63 feet 2 inches in breadth and 28 feet

7 inches in maximum draft and of 8172 gross and 4823 net tons register and that her port of registry is Singapore, but except as so specifically admitted, deny knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 3 of the complaint.

FOURTH: Claimants admit that in August, 1971, at the port of Hong Kong, the S.S. SINGAPORE TRADER loaded cargo for the port of New York and thereafter arrived in New York on September 27, 1971 and discharged a portion of the cargo and that the vessel thereafter sailed for Detroit and enroute there, grounded in the St. Lawrence Seaway on October 15, 1971 and that the cargo remaining onboard at the time of the grounding was thereafter discharged and delivered at Ogdensburg, New York, but except as so specifically admitted, deny knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 4 of the complaint.

FIFTH: Claimants deny each and every allegation contained in paragraph 5of the complaint.

SIXTH: Claimants deny each and every allegation contained in paragraph 6 of the complaint.

SEVENTH: Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 of the complaint.

EIGHTH: Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the complaint.

NINTH: Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of the complaint.

TENTH: Claimants deny that plaintiffs are entitled to exoneration from or limitation of liability for any loss, damage, injury or destruction caused by the stranding of the S.S. SINGAPORE TRADER: That plaintiffs have any valid defense for any loss, damage, injury or destruction: That plaintiffs are entitled to the benefit of the limitation of liability provided for in §§ 4283, 4284, 4285 and 4289 of the Revised Statutes of the United States (46 USC §§ 183-185 and 188), and the various statutes supplemental thereto and amendatory thereof; but deny knowledge or information sufficient to form a belief as to each and every other allegation contained in paragraph 10 of the complaint herein.

W H E R E F O R E, claimants pray (1) that the complaint for exoneration from or limitation of liability be dismissed; (2) that their claims listed in the Claim which is being filed concurrently herewith be allowed in full, with interest and costs; (3) that this Court grant such other, further and different relief as in law and justice may be proper.

HILL, RIVKINS, WARBURTON, McGOWAN & CAREY

BY _____

A Member of the Firm

Attorneys for Claimants, Joseph Markovits, Inc., et al.
Office & P. O. Address:
96 Fulton Street
New York, New York 10038
Tel. No. 233 - 6171

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

RAYMOND P. HAYDEN, being duly sworn, deposes and says:

That he is an attorney associated with the firm of Hill, Rivkins, Warburton, McGowan and Carey, attorneys for the Claimants herein; that he has read the foregoing Answer and knows the contents thereof; and that the same is true to the best of his knowledge, information and belief.

That the source of deponent's information and the grounds of his belief, are documents and correspondence in possession of deponent's said firm.

Raymond P. Hayden

Sworn to before me this
7 day of December, 1972.

Daniel Cavallaro

Notary Public

DANIEL CAVALLARO
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1974

MG. ATT'S No. 10-[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mailed - 1/24/74
Filed - 1/24/74

In the Matter	:	
of the	:	72 Civ. 1275 (CLB)
Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER and China Marine Investment Co., Ltd. and China Overseas Navigation Co., [illegible], Plaintiffs, for exoneration from or limitation of liability.	:	In Admiralty
	:	COUNTERCLAIMS

DMC
LJB
JJH
WPH

Singapore Navigation Company, S.A., for its counterclaims against all claimants in the proceeding herein alleges on information and belief as follows:

FIRST: Plaintiff repeats and alleges each and every allegation contained in paragraphs numbered 1 through 3 of the complaint herein as if fully set forth at length.

SECOND: In August, 1971, cargo owned by said claimants was delivered to and loaded on board the S. S. SINGAPORE TRADER at the port of Hong Kong for transportation to New York pursuant to bills of lading dated August 13, 1971.

THIRD: On or about August 22, 1971, having the aforesaid cargo on board, the SINGAPORE TRADER sailed from the port of Hong Kong for the port of New York.

FOURTH: On September 27, 1971 the S. S. SINGAPORE TRADER arrived at the Port of New York where she discharged part of her cargo. On October 1, 1971 a longshoremen's strike on the East Coast of the United States forced all cargo discharging operations from ships to be halted for an indefinite period and after learning that all nearby non U.S. ports could not or would

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refuse to handle the cargo remaining on the S. S. SINGAPORE TRADER with notice to all persons interested in the cargo, the S. S. SINGAPORE TRADER was dispatched to the Port of Detroit, Michigan to discharge the balance of the cargo. On October 15, 1971, while en route to Detroit, the S. S. SINGAPORE TRADER ran aground and became stranded in the St. Lawrence Seaway, causing the vessel to be seriously damaged and rendering it impossible to further prosecute the voyage. Thereafter, certain of the cargo was removed from the ship by professional salvors and barged to Ogdensburg, New York. The vessel was then removed from the strand by the same professional salvors and towed to Ogdensburg, New York where the voyage was terminated and the cargos were discharged from the barges and from the vessel and delivered to the consignees. In removing the vessel from the strand, expenses for salvage and expenses of a general average nature were incurred in order to preserve and protect the venture.

FIFTH: The aforesaid bills of lading, which constituted the contracts of carriage, contained among others, the following clause:

> "6. Average...
> In the event of accident danger damage or disaster before or after commencement of the voyage resulting from any causes whatsoever whether or not due to negligence or unseaworthiness initial or otherwise for which or for the consequences of which the carrier is not responsible or is exempted from responsibility by law or contract or otherwise the shippers consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices losses or expenses of a general average nature that may be made or incurred and shall pay any salvage and special charges incurred in respect of the goods.
> ***"

SIXTH: On October 15, 1971 the S. S. SINGAPORE TRADER stranded, not due to any cause for which the plaintiff is liable, and on that date and subsequently efforts were made to save the ship and cargo, in which efforts certain responsible general average sacrifices and expenses were made and incurred in connection with the freeing of the vessel from the stranding, and the removal of the vessel and cargo to a safe port, all of which were necessary for the safety and preservation of the ship and cargo for further completion of the venture.

SEVENTH: The stranding and resulting general average, sacrifices and expenses were not due to any causes, negligence or unseaworthiness for which or for the consequences of which the plaintiff was or is liable by law, contract or otherwise and at and before the beginning of the voyage due diligence was used to make the said vessel seaworthy and properly manned, equipped and supplied. All claimants in the proceeding herein, under the express contracts, are liable in personam for their proportionate contributions to the general average sacrifices and expenditures.

EIGHTH: That in accordance with the aforesaid contract, Frank B. Hall & Co., Inc., General Average Adjusters in the Port of New York, were appointed to prepare a general average statement and are now engaged in preparing the said statement, adjusting and stating the general average in accordance with the applicable provisions of the aforesaid contract, and said general average statement will be filed herein.

NINTH: The amount due and owing from the claimants has not yet been calculated. Plaintiff reserves the right to amend its counterclaims to state the amount due and owing from said claimants when the general average statement is completed.

WHEREFORE, plaintiff Singapore Navigation Company, S.A., prays that it be granted recovery on its counterclaims together with interest and attorney's fees, costs and disbursements and that it have such other further relief as this Court may deem just and proper.

Dated: New York, New York

January , 1974

KIRLIN, CAMPBELL & KEATING

By_____
A Member of the Firm
Attorneys for Plaintiff
Singapore Navigation
Company, S.A.
120 Broadway
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TO:

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New York, New York 10007

Symmers, Fish & Warner
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New York, New York 10022

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DLM/CCG

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

OFFICE COPY

Kirlin Campbell & Keating
120 BROADWAY
NEW YORK, N.Y. 10005

In the Matter

of the

Complaint of Singapore Navigation Company, S.A., as Owner of the Steamship SINGAPORE TRADER, China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., for exoneration from or limitation of liability,

Plaintiffs and Third-Party Plaintiffs,

-against-

PITTSTON STEVEDORING CORP., and MURPHY PACIFIC MARINE SALVAGE COMPANY,

Third-Party Defendants.

INDEX NO.
72 Civ. 1275 (CLB)

ANSWER TO COUNTERCLAIMS

By MEGO Corp. ET. AL.

Claimants, represented by their attorneys, Donovan, Donovan, Maloof & Walsh, answering the counterclaims of Plaintiff, Singapore Navigation Company, S.A., herein, upon information and belief:

FIRST: Admit that this is a case of admiralty and maritime jurisdiction as alleged in paragraph numbered 1 of the Complaint and realleged in paragraph "FIRST" of the counterclaims, but deny knowledge or information sufficient to form a belief as to allegations contained in paragraph numbered 2 of the Complaint, and realleged in paragraph "FIRST" of the counterclaims and deny knowledge or information sufficient to form a belief as to the specifications or port of registry of the SS SINGAPORE TRADER and deny the remainder of that which is alleged in paragraph numbered 3 of the Complaint and which is realleged in paragraph "FIRST" of the counterclaims.

SECOND: Admit the allegations contained in paragraph "SECOND" of the counterclaims.

THIRD: Admit the allegations contained in paragraph "THIRD".

FOURTH: Admit that the SS SINGAPORE TRADER arrived at the Port of New York, on September 27th, 1971, where she discharged part of her cargo and that on October 1st, 1971, a longshoremen's strike on the East Coast of the United States occurred. It is also admitted that the SS SINGAPORE TRADER ran aground and stranded in the St. Lawrence Seaway on October 15th, 1971, but except as specifically admitted, deny the allegations in paragraph "FOURTH".

FIFTH: Deny knowledge or information sufficient to form a belief as to the allegations in paragraph "FIFTH".

SIXTH: Admit that the SS SINGAPORE TRADER stranded on October 15th, 1971, but, except as is so specifically admitted, deny the allegations in paragraph "SIXTH".

SEVENTH: Deny the allegations in paragraph "SEVENTH".

EIGHTH: Deny knowledge or information sufficient to form a belief as to the allegations in paragraph "EIGHTH".

NINTH: Deny knowledge or information sufficient to form a belief as to the allegations in paragraph "NINTH".

FURTHER ANSWERING THE COMPLAINT AND AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF:

TENTH: That the incident giving rise to the alleged General Average occurred as the result of the fault of the plaintiff and in consequences of which claimants are not liable to contribute to General Average.

AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF:

ELEVENTH: That the incident giving rise to the alleged General Average occurred as the result of a cause for which or for the consequences of which the plaintiff is responsible by statute, contract or otherwise.

AS AND FOR A THIRD, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF:

TWELFTH: That the plaintiff is guilty of having deviated from the contract of carriage in that they nominated the United States Port of Detroit as an alternate to the Port of New York instead of the nearest non-U.S.A. port as was agreed by the parties and as was expressed in the contract of carriage; said deviation being the proximate cause of the disaster in this case.

WHEREFORE, claimants pray that the complaint and counterclaims of the plaintiff be dismissed as against them with costs, and that claimants may have such other and further relief as to the Court may seem just and proper.

Dated: New York, New York.
March 14th, 1974.

DONOVAN, DONOVAN, MALOOF & WALSH

By: /s/ David L. Maloof
David L. Maloof, A Member of the Firm
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TO:

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345 Park Avenue
New York, New York 10022

BOAL, DOTI & LARSEN
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Murphy Pacific Marine Salvage Company
225 Broadway
New York, New York 10007

52

MS. ATTY'S NO. 10-642

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of Singapore Navigation Company, S.A., as Owner of the Steamship Singapore Trader, China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., for examination from or limitation of liability,	72 Civil 1275 (CLB)
Plaintiffs and Third Party Plaintiffs, - against - PITTSTON STEVEDORING CORP. and MURPHY PACIFIC MARINE SALVAGE COMPANY, Third Party Defendants.	ANSWER TO COUNTERCLAIMS

OFFICE COPY
Kirlin, Campbell & Keating
120 BROADWAY
NEW YORK, N. Y. 10005

Cargo claimant, ALSTER IMPORT COMPANY, INC., by its attorneys, LILLY, SULLIVAN & PURCELL, P.C., answering the counterclaims of plaintiff, SINGAPORE NAVIGATION COMPANY, S.A., et al., states upon information and belief, as follows:

FIRST: Cargo claimant, ALSTER IMPORT COMPANY, INC. (hereinafter referred to as ALSTER), repeats, reiterates and realleges its answer to the complaint herein, as if fully set forth at length herein.

SECOND: ALSTER admits the allegations contained in paragraphs numbered "SECOND" and "THIRD" of the counterclaim.

THIRD: ALSTER admits that the SS SINGAPORE TRADER arrived at the Port of New York, on September 27, 1971, where she discharged part of her cargo and that on October 1, 1971, a longshoremen's strike on the East Coast of the United

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States occurred. It is also admitted that the SS SINGAPORE TRADER ran aground and stranded in the St. Lawrence Seaway on October 15, 1971, but except as specifically admitted, denies the allegations in paragraph "FOURTH" of the counterclaim.

FOURTH: ALSTER denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "FIFTH", "EIGHTH" and "NINTH" of the counterclaim.

FIFTH: ALSTER denies the allegations contained in paragraphs numbered "SIXTH" and "SEVENTH" of the counterclaim.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, ALSTER ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

SIXTH: That the incident giving rise to the alleged General Average occurred as the result of the fault of the plaintiff and its failure to use due diligence to provide a seaworthy vessel and in consequences of which ALSTER is not liable to contribute to General Average.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, ALSTER ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

SEVENTH: That the incident giving rise to the alleged general average occurred as the result of a cause for which or for the consequences of which the plaintiff is responsible by statute, contract or otherwise.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A THIRD, SEPARATE, COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, ALSTER ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

EIGHTH: That the plaintiff is guilty of having deviated from the contract of carriage in that they nominated the United States Port of Detroit as an alternate to the Port of New York instead of the nearest non-U.S.A. port as was agreed by the parties and as was expressed in the contract of carriage; said deviation being the proximate cause of the disaster in this case.

WHEREFORE, ALSTER prays that the complaint and counterclaims of the plaintiff be dismissed as against them with costs, and that ALSTER may have such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
March 21, 1974.

LILLY, SULLIVAN & PURCELL, P.C.
Attorneys for Alster Import Company, Inc.

By /s/ Geo. W. Sullivan
George W. Sullivan, Member of the Firm
Office and P.O. Address
17 Battery Place
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TO:

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BOAL, DOTI & LARSEN
Attorneys for Third Party Defendant
Murphy Pacific Marine Salvage Company
225 Broadway - New York, New York 10007

MG. ATTY'S NO. 10-29B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of Singapore Navigation Company, S.A., as Owner of the Steamship Singapore Trader, China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., for examination from or limitation of liability,	72 Civil 1275 (CLB)
Plaintiffs and Third Party Plaintiffs, -against- PITTSTON STEVEDORING CORP. and MURPHY PACIFIC MARINE SALVAGE COMPANY, Third Party Defendants.	ANSWER TO COUNTERCLAIMS

Cargo claimant, LO-E MANUFACTURING CORP., by its attorneys, REICHBART, REICHBART & FEIT, answering the counterclaims of plaintiff , SINGAPORE NAVIGATION COMPANY, S.A., et al., states upon information and belief as follows:

FIRST: Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered FIRST of the counterclaim.

SECOND: Admits the allegations contained in paragraphs numbered "SECOND" and "THIRD" of the counterclaim.

THIRD: Admits that the SS SINGAPORE TRADER arrived at the Port of New York, on September 27, 1971,

where she discharged part of her cargo and that on October 1, 1971, a longshoremen's strike on the East Coast of the United States occurred. It is also admitted that the SS SINGAPORE TRADER ran aground and stranded in the St. Lawrence Seaway on October 15, 1971, but except as specifically admitted, denies the allegations in paragraph "FOURTH" of the counterclaim.

FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "FIFTH", "EIGHTH" and "NINTH" of the counterclaim.

FIFTH: Denies the allegations contained in paragraphs numbered "SIXTH" and "SEVENTH" of the counterclaim.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

SIXTH: That the incident giving rise to the alleged General Average occurred as the result of the fault of the plaintiff and its failure to use due diligence to provide a seaworthy vessel and in consequences of which cargo claimant LO-E MANUFACTURING CORP. is not liable to contribute to General Average.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, ALLEGES

UPON INFORMATION AND BELIEF, AS FOLLOWS:

SEVENTH: That the incident giving rise to the alleged general average occurred as the result of a cause for which or for the consequences of which the plaintiff is responsible by statute, contract or otherwise.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A THIRD, SEPARATE, COMPLETE DEFENSE TO THE COUNTER-CLAIMS OF PLAINTIFF, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

EIGHTH: That the plaintiff is guilty of having deviated from the contract of carriage in that it nominated the United States Port of Detroit as an alternate to the Port of New York instead of the nearest non-U.S.A. port as was agreed by the parties and as was expressed in the contract of carriage; said deviation being the proximate cause of the disaster in this case.

WHEREFORE, cargo claimant LO-E MANUFACTURING CORP. prays that the complaint and counterclaims of the plaintiff be dismissed as against them with costs, and that claimant may have such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
March 25, 1974.

REICHBART, REICHBART & FEIT
Attorneys for LO E Manufacturing Corp.

By Charles Feit
Charles Feit, Member of the Firm
Office and P O. Address
41 East 42nd Street
New York, New York 10017

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of Singapore Navigation Company, S.A., as Owner of the Steamship Singapore Trader, China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., for exoneration from or limitation of liability,	72 Civil 1275 (CLB)
Plaintiffs and Third Party Plaintiffs, - against - PITTSTON STEVEDORING CORP. and MURPHY PACIFIC MARINE SALVAGE COMPANY,	ANSWER TO COUNTERCLAIMS
Third Party Defendants.	

Cargo claimants, KATONE CORPORATION, RELIANCE TRADING CORPORATION OF AMERICA, M. PRESSNER & CO., INC. and J. ZWIEBEL, by their attorneys, BIGHAM ENGLAR JONES & HOUSTON, answering the counterclaims of plaintiff, SINGAPORE NAVIGATION COMPANY, S.A., et al., state upon information and belief, as follows:

FIRST: Cargo claimants, KATONE CORPORATION, et al, repeat, reiterate and reallege their answers to the complaint herein, as if fully set forth at length herein.

SECOND: Cargo claimants, KATONE CORPORATION, et al, admit the allegations contained in paragraphs numbered "SECOND" and "THIRD" of the counterclaim.

THIRD: Cargo claimants, KATONE CORPORATION, et al, admit that the SS SINGAPORE TRADER arrived at the Port of New York, on September 27, 1971, where she discharged

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Filed 5/9/74

part of her cargo and that on October 1, 1971, a longshoremen's strike on the East Coast of the United States occurred. It is also admitted that the SS SINGAPORE TRADER ran aground and stranded in the St. Lawrence Seaway on October 15, 1971, but except as specifically admitted, deny the allegations in paragraph "FOURTH" of the counterclaim.

FOURTH: Cargo claimants, KATONE CORPORATION, et al, deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "FIFTH", "EIGHT" and "NINTH" of the counterclaim.

FIFTH: Cargo claimants, KATONE CORPORATION, et al, deny the allegations contained in paragraphs numbered "SIXTH" and "SEVENTH" of the counterclaim.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, CARGO CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF, AS FOLLOWS:

SIXTH: That the incident giving rise to the alleged General Average occurred as the result of the fault of the plaintiff and its failure to use due dilligence to provide a seaworthy vessel and in consequences of which cargo claimants, KATONE CORPORATION, et al, are not liable to contribute to General Average.

FURTHER ANSWERING THE COMPLAINT AND AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, CARGO CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF, AS FOLLOWS:

SEVENTH: That the incident giving rise to the

alleged general average occurred as the result of a cause for which or for the consequences of which the plaintiff is responsible by statute, contract or otherwise.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A THIRD, SEPARATE, COMPLETE DEFENSE TO THE COUNTERCLAIMS OF PLAINTIFF, CARGO CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF, AS FOLLOWS:

EIGHT: That the plaintiff is guilty of having deviated from the contract of carriage in that they nominated the United States Port of Detroit as an alternate to the Port of New York instead of the nearest non-U.S.A. port as was agreed by the parties and as was expressed in the contract of carriage; said deviation being the proximate cause of the disaster in this case.

WHEREFORE, cargo claimants, KATONE CORPORATION, RELIANCE TRADING CORPORATION OF AMERICA, M. PRESSNER & CO., INC. and J. ZWIEBEL, pray that the complaint and counterclaims of the plaintiff be dismissed as against them with costs, and that the aforementioned cargo claimants may have such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
May 7, 1974

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Katone Corporation, Reliance Trading Corporation of America, M. Pressner & Co., Inc. and J. Zwiebel.

By _____
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of the

Complaint of Singapore Navigation Company, S.A., as Owner of the Steamship SINGAPORE TRADER, China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., for exoneration from or limitation of liability,

Plaintiffs and Third-Party Plaintiffs,

-against-

PITTSTON STEVEDORING CORP., and MURPHY PACIFIC MARINE SALVAGE COMPANY,

Third-Party Defendants.

And Related Cases

72 Civil 1275 (CLB)
71 Civil 5324 (CLB)
71 Civil 5321 (CLB)

AGREED FINDINGS OF FACT

AGREED FINDINGS OF FACT

1. At the material times, plaintiff Singapore Navigation Company, S.A. was a corporation organized and existing under the laws of the Republic of Panama; and it owned and operated the SS SINGAPORE TRADER. Plaintiff China Marine Investment Co., Ltd. was a corporation organized and doing business under and by virtue of laws of the British Crown Colony of Hong Kong, having an office and principal place of business there. Plaintiff China Overseas Navigation Co., Ltd. was a corporation organized and doing business under and by virtue of the laws of the Republic of China and having an office and principal place of business in Taipei, Taiwan. At all material times plaintiffs China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd. acted as managers for plaintiff Singapore Navigation Company, S.A. in connection with the operation of the SINGAPORE TRADER.

2. The steamship SINGAPORE TRADER is a single screw steel vessel built by the North Carolina Shipbuilding Company in 1944. She is 459 feet - 1 inch in overall length, 63 feet 2 inches in breadth and her maximum draft is 28 feet 7 inches. She is of 8,172 gross tons and 4,823 net tons register. Her port of registry is Singapore.

3. Plaintiff Singapore Navigation Company, S.A. became the owner of the SINGAPORE TRADER in June 1971.

4. While under the ownership of Singapore Navigation Company, S.A., the SINGAPORE TRADER made two voyages, the first from Kao Hsiung to Saigon, and the second commencing on August 13, 1971 from Hong Kong, to New York and ultimately to Detroit, the voyage on which the stranding occurred, which is the subject of this action.

5. The SINGAPORE TRADER was equipped with a Sperry gyro compass, two magnetic compasses, a Raytheon Pathfinder radar, a fathometer manufactured by the Submarine Signal Company, a radio direction finder manufactured by the Mackay Radio and Telegraph Company, a Sperry electronic steering system and an electro-hydraulic telemotor steering system. She was also equipped with sextants, a chronometer, parallel rulers, dividers, charts for the material areas and other nautical publications, including the St. Lawrence Seaway Handbook, a List of Lights for Canadian waters west of Montreal and East of British Columbia, Radio Aids to Navigation, Canadian Notices to Mariners dated October 1, 1971, a booklet entitled St. Lawrence River Pilot and a booklet entitled Notes for Masters, Eastern Canada and Great Lakes, 1971, from Colley Motorships Ltd., among others.

6. At and before the commencement of the voyage from Hong Kong to New York on August 13, 1971, the SINGAPORE TRADER was classed with the American Bureau of Shipping with respect to her hull, machinery and equipment.

7. Captain Mou Chang Yang, the SINGAPORE TRADER's master, was 48 years of age at the time in question. He entered the Chinese Naval Service in 1945 and was a graduate of the Chinese Naval Academy. He left the Chinese Navy in 1964 with the rank of captain. During his tour of duty with the Chinese Navy he had 3 1/2 years sea experience. He obtained his first merchant officers license in 1964, a second mate's license issued by the Republic of China. After serving three months as a second mate, he took an examination for chief mate and received that license. He sailed on a number of vessels as chief mate until 1967 when he passed his examination for the master's license and received that license. From 1967 until 1971 he served as master of a number of vessels. He became master of the SINGAPORE TRADER in June 1971.

8. At the material times, the SINGAPORE TRADER's crew consisted of 39 persons including her master. In her deck department were her master, chief officer, second officer, third officer, bosun, four quartermasters, six sailors, a carpenter, and a radio operator. The deck officers were divided into three watches of four hours each. Each watch consisted of a deck officer, a quartermaster and a standby. In her engine department were a chief engineer, first engineer, second engineer, third engineer, junior engineer, electrician, junior electrician, five firemen, one oiler, one fitter, two wipers, among others in the crew.

9. The SINGAPORE TRADER arrived in Hong Kong on August 12, 1971 and anchored at Buoy A-25. All cargo was delivered to her by lighters.

10. On August 13, 1971 the SINGAPORE TRADER commenced loading a cargo of goods for New York. The plaintiff China Marine Investment Co., Ltd., as manager for plaintiff Singapore Navigation Company, S.A., issued bills of lading covering the shipments of cargo. A representative of the bills of lading, No. 129, is annexed hereto as Exhibit A.

11. At the material times, cargo claimant Mego Corporation was a corporation organized and existing under the laws of one of the states of United States; and at the material times was the owner, shipper or consignee of the parcel of cargo shipped on board the SINGAPORE TRADER under a bill of lading similar to Exhibit A.

12. On August 20, 1971, as the SINGAPORE TRADER commenced getting underway for New York, No. 1 condensate pump in her engine room failed. She anchored and repairs were commenced with the assistance of shore personnel. Repairs were completed on August 22 and the SINGAPORE TRADER continued her voyage to New York.

13. The SINGAPORE TRADER left Hong Kong carrying approximately 1400 long tons of cargo, approximately 74,671 pieces. The cargo consisted of radios, plastic goods, plastic flowers, plastic toys, Christmas decorations, rattan ware, personal effects, cotton and nylon goods, teak lumber and other general cargo. Her departure drafts were 9'-06" forward, and 21'-09" aft.

14. After leaving Hong Kong, the SINGAPORE TRADER proceeded towards the Panama Canal, passing south of Taiwan and Japan. The SINGAPORE TRADER arrived at Panama on September 20 and left Panama on September 21. Her drafts on passing through the Panama Canal were approximately 7'-05" forward and 19'-03" aft. On departing the Canal, after bunkering and taking on water, her drafts were 8'-06" forward 21'-11" aft.

15. The SINGAPORE TRADER arrived in New York on September 27, 1971, and commenced discharging cargo on September 28, 1971.

16. At midnight on September 30, 1971 a longshoremen's strike was commenced by the International Longshoremen's Association, shutting down cargo operations on the entire East Coast of the United States.

17. The SINGAPORE TRADER left New York for Detroit on October 8, 1971. Her drafts were 7'-06" forward and 21'-03" aft. It was estimated she would arrive in Detroit on October 16, 1971.

18. On October 13, 1971 the SINGAPORE TRADER arrived in Montreal and was inspected by the Seaway Authorities. Her drafts were about 7' forward and 21' aft.

19. The SINGAPORE TRADER was permitted to enter the System. (Reference Seaway Inspection Report Yang Ex. 15 for identification.)

20. The SINGAPORE TRADER left Montreal shortly before midnight on October 13, 1971 and continued her voyage toward Detroit. Various pilots, which are compulsory, were used during the transit of the St. Lawrence Seaway System.

21. At 1955 hours on October 14, 1971 the SINGAPORE TRADER arrived at the Snell Locks, near Cornwall, Ontario, and changed pilots. Pilot Vinton Keogh boarded the SINGAPORE TRADER, and he was her compulsory pilot from 1955 hours on October 14, 1971 until the time of the stranding at about 0420 hours on October 15, 1971.

22. Between about 1955 hours and midnight on October 14, 1971 the SINGAPORE TRADER passed through the Snell, Eisenhower and Iroquois Locks of the St. Lawrence System. After passing through the Iroquois Lock (which is near Ogdensburg, New York), and which is the last lock in the system before Lake Ontario, the master of the SINGAPORE TRADER retired to his cabin. When the master left the bridge, the third mate who had stood the 8:00 to 12:00 watch was on the bridge along with Pilot Keogh and a quartermaster.

23. At about midnight the second mate took over the watch with the pilot and a quartermaster until approximately 0355 hours.

24. At 0355 hours on the morning of October 15, 1971, the chief officer, Fang Chun Chang, took over as watch officer and quartermaster Meeng Ching Yeh took over as helmsman of the SINGAPORE TRADER. Pilot Keogh remained on the bridge.

25. Chief Officer Fang Chun Chang was 47 years old at the material time. He held a chief officers license, which he received from the Government of the Republic of China in March, 1971. He had taken a license examination for master, and successfully passed it, but had not yet received that license.

Prior to March 1971, Chief Officer Fang Chun Chang had been employed in the Chinese Navy and had retired in 1971 with the rank of captain. Chief Officer Chang served in the Chinese Navy from approximately 1941 until 1971. He was a graduate of the Chinese Naval Academy. During his naval experience he spent approximately 11 years on board ships. His duties on those ships included acting as watch officer, and cargo officer.

26. The quartermaster, Meeng Ching Yeh was 26 years old at the material time. He first commenced going to sea in 1966 and was a trainee at the Keo Hsiung Sea Production School. After a period of military service, and in April 1970 he commenced going to sea on board ships. He became employed on the SINGAPORE TRADER on July 17, 1971. During the course of the SINGAPORE TRADER's voyage from Hong Kong to New York and thence to Detroit, Quartermaster Yeh stood regular watches steering the SINGAPORE TRADER including a portion of the Panama Canal and the St. Lawrence Seaway.

27. At about 4:00 o'clock in the morning on October 15, 1971, the weather conditions were good. The visibility was good, 5 miles or more.

28. Approximately 0420 hours on October 15, 1971, while proceeding at full ahead, about 13 knots, the SINGAPORE TRADER stranded northeast of Blanket Island, on the right-hand side of the navigable channel.

29. Soundings of the depths of water around the SINGAPORE TRADER showed her stern to be hard aground.

30. Shortly after the stranding, reports were made to the Seaway Authorities, the United States Coast Guard and to the ship's owner in Hong Kong concerning her stranding.

31. On about October 16, 1971, Frank B. Hall & Co., Inc. of New York was appointed as the general average adjuster by the shipowner.

32. The SINGAPORE TRADER, in her stranded position was boarded and inspected by various government authorities, representatives of the owner, including Gannet Freighting, Inc., and of McAllister Towing Ltd. between October 15, and October 17, 1971.

33. On October 17, 1971 a salvage contract was signed between McAllister Towing Ltd. and Gannet Freighting, Inc. as agent of the owner of the SINGAPORE TRADER.

34. On the afternoon of October 18, after fuel and water had been transferred, two McAllister tugs commenced attempting to tow the SINGAPORE TRADER off the strand. Their attempt failed.

35. On October 22, 1971 a written request for bids to salvage the SINGAPORE TRADER and her cargo was prepared and sent by telex to Marine Industries Limited, Sorel, Canada, McAllister Towing Ltd., Montreal, Canada, and Murphy Pacific Marine Salvage Co., New York. Responding bids were to be submitted by noon on October 26, 1971.

36. None of the three mentioned salvage companies responded to the bid on October 26, 1971 except McAllister whose bid was rejected by the shipowner on October 29, 1971.

37. Murphy Pacific Marine Salvage Company by letter dated October 28, 1971 submitted a written proposal to salvage the SINGAPORE TRADER and her cargo for a lump sum of $230,000.

38. A written contract of salvage for the SINGAPORE TRADER and her cargo was signed on November 9, 1971.

39. On November 10, 1971 Murphy Pacific commenced removing cargo from the SINGAPORE TRADER into barges alongside that ship.

40. The SINGAPORE TRADER was removed from the strand and refloated on November 28, 1971.

41. On December 1, 1971 the SINGAPORE TRADER was towed to Ogdensburg, New York.

42. The SINGAPORE TRADER completed discharging her cargo at Ogdensburg on December 9, 1971.

43. Some cargo sustained damage as a result of the stranding and some cargo was damaged during the salvage operations.

We agree to the above findings of fact.

Dated: New York, N. Y.
May 13, 1974

KIRLIN, CAMPBELL & KEATING

By_____
A Member of the Firm
Attorneys for Plaintiffs

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By_____
A Member of the Firm
Attorneys for some Cargo Claimants

If at the place of shipment of the goods no such Statute Ordinance or Law is in force this Bill of Lading shall be subject to the Rules contained in the Schedule to the Statute of the United Kingdom of Great Britain and Northern Ireland entitled the Carriage of Goods by Sea Act 1924 and the carrier shall be entitled to the benefit of the provisions contained in Clauses 2, 3 and 6 (2) of the said Act in the same manner as he would have been entitled if the said Act had applied to this Bill of Lading.

Provided in either of the events above mentioned that (a) if any clause covenant or agreement herein in part contravenes such Statute Ordinance or Law or the said Rules as the case may be and in other part is capable of being construed so as not to contravene and is permissible under such Statute Ordinance or Law or the said Rules as the case may be such last mentioned part shall be deemed to be included in the agreement between the carrier and the shipper and that (b) any agreement stipulation condition reservation or exemption herein contained which is capable of application to the custody and care and handling of the goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea shall be deemed to apply thereto notwithstanding that it may contravene the Law affecting any other part of the transit.

2 During the period before the goods are loaded on or after they are discharged from the ship on which they are carried by sea the following terms and conditions shall apply to the exclusion of any other provisions in this Bill of Lading that may be inconsistent therewith viz. (a) so long as the goods remain in the actual custody of the carrier or his servants (otherwise than as mentioned in sub-clause (b) hereof) the carrier shall not be liable for loss damage or detention arising or resulting from the act neglect or default of the servants or agents of the carrier nor from any other cause whatsoever arising without the actual fault or privity of the carrier nor in any event for an amount exceeding the declared value of goods paying freight on an ad valorem basis or the invoice value whichever shall be least or in the case of other goods the invoice value or £100 per package or unit or £25 per cubic foot or half hundredweight whichever shall be least. Liability for partial loss or damage shall be adjusted at such proportion as the percentage of loss or damage bears to the sum which would have been payable in the event of total loss. (b) Whilst the goods are being transported to or from the ship by lighter or other craft whether owned by the carrier or not or are being loaded or unloaded on or from such craft and such transport or loading or unloading is done by the carrier it shall be done at the sole risk of the owners of the goods including risk of unseaworthiness or unfitness of lighter or other craft. (c) In all other cases the responsibility of the carrier whether as carrier or as bailee or bailee of the goods shall be deemed to commence only when the goods are loaded on the ship and to cease absolutely on discharge when they are free of the ship's tackle.

3 Route. The carrier does not contract to proceed by the shortest or by the geographical or customary or advertised route (if any) and the ship or other vessel or conveyance may for any purpose whatsoever whether connected with the joint adventure or not and whether before the beginning or at any time or stage of the voyage proceed by any course or route whatsoever although in a contrary direction to or out of or beyond the direct or geographical or customary or advertised route to the place of delivery once or oftener in any order backwards or forwards without notice to shippers or consignees and for any such purpose may call and/or remain or omit to call and/or remain at any port or ports place or places whatsoever and may carry the goods back to the port of loading or to any port or place whether beyond the port of delivery or not and may make any deviation whatsoever at or in sailing from the port of loading or any such port or place aforesaid. The said goods or any part thereof may at the carrier's option at any time or times during the transit whether before or after shipment be carried in a substituted ship or transhipped to any other ship or landed or stored or put into bulk or craft or lighter or reshipped on the same or any other ship or ships proceeding by any route or may be forwarded by lighter rail or any other conveyance belonging to the carrier or not and even though the said goods or any part thereof are detained or delayed in the course of such shipment transhipment landing storage or reshipment.

For the purpose of this contract all such departures from the direct geographical customary or advertised route and all such delays detentions shipment transhipment landings storages reshipments and forwarding shall be included in the contract of carriage herein provided for notwithstanding any reference to the place of shipment or delivery or any other provision whatsoever herein contained.

4 The ship shall have liberty to sail with or without pilots to tow and assist vessels in all situations to deviate with the goods on board to carry cargo of all kinds dangerous or otherwise and to comply with orders given or purporting to be given by any Government, Harbour, Dock or Canal Authority.

5 If the loading carriage discharge or delivery is impeded or if there are reasonable grounds for anticipating that the same is or threatens to be impeded by the imminence outbreak or existence of war whether international or civil or by any control over the use of or movements of the vessel exercised by any Government or other Authority (which expression throughout this clause shall be deemed to include any body or organisation purporting or claiming to exercise the powers of a Government or Authority) or by the prohibition of intercourse commercial or otherwise, or by the restriction or control of such intercourse by any Government or other Authority or by measures taken by any Government or other Authority in consequence of or connected with any of the above matters or by quarantine sanitary custom or labour regulations lockouts strikes or disturbances we had weather or by absence from any cause of facilities for loading discharge or delivery the carrier and/or the Master may (if in his or their unrestricted discretion he or they think it advisable) at any time before or after the commencement of the voyage abandon or suspend the voyage after or vary or depart from the proposed or advertised or agreed or customary route and or delay or detain the vessel at or off any port or place and or tranship and forward subject to the provisions of clause 9 hereof or put into bulk lighter or craft or land or store or otherwise dispose of the cargo at any port or ports place or places without being liable for any loss or damage whatsoever directly or indirectly sustained by the owners of the goods and all at the risk and expense of the owners of the goods. Anything done or not done or any reasonable deviation in compliance with the provisions hereinbefore contained or any of them shall be deemed to be within the contract voyage.

6 Liberties. The carrier shall have liberty to carry goods of any description whatsoever whether dangerous or not which may be carried on the ship mentioned herein as well as goods of the kind mentioned herein and to load and unload the goods at any time and place whether or not such time or place be otherwise specified herein and to call at any port or ports in any order and to omit calling at any port or ports whether scheduled or not and to carry the goods to and load and unload and discharge the goods at any port or ports place or places although the same may be out of the ordinary route or not on the direct or customary route and to carry the goods on deck or under deck without notice to the shipper and to tranship and forward the goods and to proceed to and stay at any port or ports place or places for the purpose of loading or discharging cargo or fuel or for any other purpose whatsoever whether connected with the adventure or not and to sail without pilots and to tow and assist vessels in all situations and to deviate for the purpose of saving life or property and to comply with any orders or directions as to departure arrival route ports or places or otherwise howsoever given to the master by any person or persons authorised to give such orders or directions by the Government of the country under the flag of which the vessel sails or any subdivision thereof or by any de facto Government or local authority or by any person or persons acting or purporting to act with the authority of such Government or subdivision or authority or by any committee or person having under the terms of the war risks insurance on the ship the right to give such orders or directions and any such orders or directions shall be deemed to be within the contract voyage.

7 Transhipment. The carrier may tranship the goods and may forward the goods by any other ship or ships whether of the same or different description and whether belonging to the carrier or not and may carry the goods or any part thereof in or on deck and may leave the ship on which the goods are originally shipped at any port or place and may forward the goods by any other means of transport and may carry the goods beyond the port of discharge and may discharge the goods at any port or place and may store the goods ashore afloat or in craft at any port or place and may reship the goods and may carry the goods back to the port of discharge or any other port or place whether or not the same be mentioned herein as a port of call or discharge and may do all things necessary for the purpose of the transhipment forwarding storage and reshipment of the goods.

8 Lighterage. All goods may be lightered to the ship or to the place of discharge and/or to the quay and/or to the craft at the risk and expense of the goods in accordance with the custom of the port.

9 Dangerous Goods. No goods of an inflammable explosive or dangerous nature shall be shipped without the knowledge and consent of the carrier and the shipper shall indemnify the carrier against all consequences arising from the shipment of such goods with such knowledge and consent. Any such goods may be discharged at any time and place or destroyed or rendered innocuous without compensation and without liability on the part of the carrier and the shipper shall be liable for all damage caused by such goods and for the cost of removal.

10 Deck Cargo. Goods shipped on deck are carried entirely at the risk of the owners thereof and the carrier shall not be liable for any loss or damage howsoever arising to such goods.

11 Notification. Any clause hereon giving names of parties who desire to be notified of ship's arrival at destination is solely for the information of ship's agents and failure to notify shall not involve the carrier in any responsibility or relieve the consignees from any obligation hereunder.

12 Master Porterage. Notwithstanding any custom of the port to the contrary the goods may be landed on or before any day of which notice has been given to the consignees and the master may appoint any firm or persons to receive, transfer, watch, weigh, measure and deliver the goods on behalf of the consignees who shall pay to such firm or persons the current rate for all work performed on their behalf and indemnify the carrier from all claims and expenses incurred.

13 Wharfage Customs or Port of Importation or delivery. Any bond or undertaking between permitting the landing or forwarding of dutiable goods and carrier, master or agents are hereby authorised to give such undertaking on behalf of owners of the goods who shall indemnify the carrier from all risk such expenses incurred. The carrier and/or master porter are authorised by the owners of dutiable cargo at any port, during and after discharge, at their sole discretion to incur and pay Customs charges for watching such cargo which charges the owners thereof undertake to repay, any custom of the port to the contrary notwithstanding.

14 Goods not permitted to be landed at destination may be discharged at any other port or ports or returned to the port of loading by land or water all at the risk and expense of the owners of the goods who shall pay freight for return carriage.

15 A valuable package is one of which the contents exceed in value twenty-five pounds sterling per cubic foot, if measurement cargo, or per half hundredweight of weight cargo. The shipper shall declare the carrier before shipment the nature and value of goods which are valuable packages. Consignees must take delivery of valuable packages [illegible] which they may be landed and stored or carried on at the risk and expense of the owners thereof.

16 Claims. Any claims that may arise hereunder must be made at the port of delivery for determination only at that port. In consideration of the rate of freight at which this shipment is accepted, liability for loss or damage to goods or any part thereof shall never exceed (a) the declared value of goods paying freight on an ad valorem basis or the invoice value whichever shall be less or (b) in the case of other goods the invoice value or £100 per package or unit whichever shall be less, and it is hereby agreed that the value of the goods does not exceed said amount. Unless a statement is written on this Bill of Lading that freight is paid or payable on an ad valorem assessment, the nature and value of such goods have been declared before shipment and inserted in the Bill of Lading, the goods shall be deemed to have been received and liability if any shall be adjusted under clause (b). Under no circumstances shall liability exceed the actual loss or damage sustained; the carrier shall not be liable for any consequential or special damages and shall have the option of replacing any lost or damaged goods.

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

At any port where, in accordance with Customs regulations, the goods have to be landed into the charge of the Customs or other Authorities no claims for shortage or damage will be considered by the carrier, beyond that noted by the Authorities at the time of receiving the goods into their charge.

17. Apportionment. In the event of the Carrier being unable to deliver the whole of the goods to which this Bill of Lading relates by reason of there being a quantity of unidentifiable goods to which there are several claimants the Carrier may apportion such unidentified goods among such claimants. The owners of the goods covered by this Bill of Lading shall accept such apportionment to the extent thereof and the Carrier shall not be under any liability whatsoever in respect of goods covered by this Bill of Lading which may be apportioned to the owners of other goods. The carrier or his agents may at their discretion sell uncleared perishable goods forthwith and other unclaimed goods after three months from date of discharge, and payment to the owners of the goods of the net proceeds of the sale less freight and charges, if any, shall free the carrier from all liability.

18. Breakage of Glass, China, [illegible] of a bottle or fragile article shall be taken to be due to inherent defect, quality or vice of the goods or insufficiency of package in the absence of evidence of negligence fault or failure in the duties and obligations of the carrier.

19. Goods are not to be deemed sufficiently marked unless their destination is distinctly marked upon them by the shipper before shipment, in letters at least two inches high, in such a manner as will remain legible until delivery. In any case can the carrier accept responsibility for delivery to other than leading marks.

20. Where packages are wired or sealed or otherwise specially secured to prevent pilferage the carrier takes no responsibility for the condition of such fastenings unless (a) his attention is specially drawn to them before shipment, and this Bill of Lading classed accordingly, and (b) any defect is brought to his notice in writing before the removal of the goods.

The ship, in addition to any liberties expressed or implied herein, shall have liberty to comply with any orders or directions as to loading, departure, routes, ports of call, stoppages, transhipment, discharge, arrival or destination, of whatsoever kind, given by any Government or any Department thereof having authority, or by any person acting or purporting to act with the authority of such Government or Department thereof or by any committee or person having under the terms of the War Risks' Insurance on the vessel the right to give such orders or directions and if by reason of and/or in compliance with any such orders or directions anything is done or is not done, the same shall be within this contract.

The ship is free to carry contraband explosives munitions or warlike stores and may sail armed or unarmed.

6. Average, if any, shall be adjusted according to York-Antwerp Rules, 1950 but General Average loss shall be borne by those on whom it has fallen unless an adjustment is required in writing by interests which would be entitled to receive in the aggregate, per adjusters' estimate, not less than £1,000 net. In the event of accident danger damage or disaster before or after commencement of the voyage resulting from any cause whatsoever whether or not due to negligence or unseaworthiness within or otherwise for which or for the consequences of which the carrier is not responsible or is exempted from responsibility by law or contract or otherwise the shippers consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices losses or expenses of a general average nature that may be made or incurred and shall pay any salvage and special charges incurred in respect of the goods.

In case of casualty or claims the carrier master or agents shall represent and bind the owners of the goods, with liberty to sue for, defend or settle claims to be borne pro rata by the interests involved. The carrier, master or agents may require deposits against salvage or average charges, including legal costs, without liability for interest, and such deposits shall be made before delivery of the goods. Passengers shall not pay any General Average contribution in respect of luggage or personal effects. Claims for services by other vessels belonging to the carrier, wherever rendered, may be adjudicated upon in the English Law Courts whose decisions shall bind the owners of the goods. The carrier may charge interest at the rate of five per cent per annum on his advances for salvage or average.

7. Any goods deteriorating through inherent defect, quality or vice, and being in the master's opinion likely to damage the ship or crew or other goods, may, without compensation to the owners and without consulting them, be jettisoned or destroyed or at the risk of the owners of the goods discharged at any port, but in any of the above events, freight thereon, if not prepaid, shall be payable in proportion to carriage and all loss or damage, costs or expenses caused to the ship or crew or other cargo, or to any interest whatsoever, shall be paid or refunded by the owners of the goods. The carrier or his agents may at their discretion sell goods so discharged for account of the owners thereof, and at their expense.

Shippers whether principals or agents shall be liable for loss or damage to any person or interest whatsoever caused by dangerous or injurious goods shipped without full disclosure of their nature whether shippers were aware thereof or not.

Notwithstanding anything to the contrary herein contained [illegible] received, kept and carried at the sole risk of the owner thereof and that the carrier nor any stevedore, wharfinger nor any agent or servant of any of them nor any other person whomsoever upon whom the carrier may be responsible shall be under any liability whatsoever for animals of any kind, nor for any loss or expense connected therewith howsoever caused. Shippers and all concerned are hereby advised to see that their insurance policies cover all and every risk whatsoever whether before or afloat and are made without recourse to the carrier or any of the parties aforementioned.

8. If the goods are [illegible] consignees or persons appointed by them, such persons shall be deemed [illegible] agents of the owners of the goods and not of the carrier.

9. Transhipment and Forwarding. The responsibility of each carrier acting as such is limited to that part of the transit actually undertaken by him. The shipper or consignee constitutes the carrier his agent to enter into contracts with others for the prior and/or subsequent transport of the goods and/or storing lighterage transhipping or otherwise dealing with them prior to or in the course of or subsequent to such transport without responsibility for any act neglect or omission on the part of the carrier who may as such agent take contracts of carriage from the forwarding conveyance in any form which shall comply with the law at the port or place from which the goods are shipped or forwarded even though the terms of such contracts of carriage be less favourable in any respect whatsoever to the shipper or consignee than the terms of this Bill of Lading. Unless the value of the goods is declared at the time of shipment and is stated hereon and extra freight as may be agreed upon is paid, the carrier shall in no event be under any obligation to declare to the onCarrier any valuation of the goods even though the onCarrier's contract of carriage contains a valuation or limitation of liability less than that contained in this Bill of Lading. If the goods cannot be forwarded immediately to destination any charges incurred for storage shall be borne by the owners of the goods. If the goods are forwarded by more than one conveyance consignees must take delivery of each portion immediately after arrival. Goods forwarded by rail are deliverable at any railway station within or nearest to destination [illegible] must be taken away by the consignees immediately after arrival.

21. Any statement hereon that Iron, Steel or metal [illegible] of any description have been shipped in apparent good order and condition does not involve any admission by the carrier as to the absence of rust, or fresh water damage or other deterioration between [illegible] ates, Galvanised Iron or Metal Sheets, for which the carrier accepts no responsibility.

22. Any statement hereon that Timber has been shipped in apparent good order and condition does not involve any admission by the carrier as to the absence of stains, warps, shakes, splits, holes or broken pieces, and this clause shall be deemed to constitute express notice to all persons taking delivery on the terms of this Bill of Lading that such timber does or may contain pieces so affected.

23. Boilers and similar articles may be plugged and put into water, at ship's expense but at the risk of the owners thereof.

24. Options are only granted if arranged before shipments. Destination must be declared at least 48 hours before ship's arrival at the desired port, or at the port of call at which the goods have to be transhipped for the port. Failing such declaration the goods will be carried on in the ship and landed at the last optional port or at the port of call at which the goods have to be transhipped for that port.

25. Delivery expenses at current rate must be paid by the consignees of cargo for the [illegible] U. S. A.

26. If at a port of discharge no one presents himself duly authorised by the owners of the goods to give the master a receipt for same when discharged, or if being authorised he declines or is unable for any reason to do so, then the usual [illegible] of discharge, as kept by the ship's officers, shall be held to be a sufficient delivery in good order.

27. Freight and Primage if prepaid is to be considered earned at the time of the receipt of the cargo for shipment, and is not returnable if ship be lost or not. Freight not prepaid is due on day of arrival of the goods at the port of destination and is payable before delivery, in cash, without deduction, carrying interest where payment is delayed at the rate of 5 per cent. per annum. Where the carriage of the goods is abandoned, and this contract is determined short of destination, freight if not prepaid shall be payable in proportion to the carriage. Freight charged on the basis of delivered weight of measurement will be adjusted on the outturn figures whether prepaid or not. Freight on Timber will be adjusted on the overall measurement delivered of bundles or pieces.

28. If freight is underpaid owing to the weight, measurement, contents, nature or value of the goods having been misstated by the shipper, the carrier [illegible] the owners of the goods to pay double the freight which should have been paid had the weight, measurement, contents, nature or value of the goods been stated correctly, and a certificate from the carrier or his agents shall be conclusive evidence as to the amount due.

29. Any reference on the front hereof to weight, measurement, contents, quality or value is as declared by the shipper, and involves no admission by the carrier as to the correctness thereof and constitutes no part of the carrier's description of the goods.

30. The cost of repairs to packages and/or the cost of collecting escaped contents any supplying new containers, provided such expenditure is in the carrier's opinion necessary for safe carriage or delivery and does not arise from any cause for which he is liable, also the expenses of weighing or measuring cargo for any purpose and the expenses of stacking on the quay before weighing or measuring shall be paid or refunded by the owners of the goods.

31. When cargo is discharged into craft or lighter in consequence of insufficient quay space at berth all expenses shall be paid by owners of such cargo or at the option of the carrier or his agents, and in proportions determinable by them, shall be borne by the owners of all cargo for the port.

32. Fines, expenses and losses by detention of ship or cargo caused by incorrect marking or by incomplete or incorrect description, or by shippers' or consignees' failure to comply with requirements of the Authorities at the ports of shipment, call or discharge, or with local regulations affecting the package or Bills of Lading, shall be borne by the owners of the goods.

33. Any duty, tax, surtax, tariff, charges or impost, levied on the goods under any name and of under quarantine, or for any other reason, shall be borne by the owners of the goods.

34. The carrier shall have a lien on the goods for unpaid and additional freight, demurrage, and all charges, including Customs duties, expenditure, damages and interest becoming due hereunder, while on shore on in the carrying vessels, or in hulk, craft or store, including the costs and expenses of exercising such lien, with the right of sale to satisfy any such lien.

35. Any right of sale given to the carrier under this Bill of Lading shall be in addition to rights conferred by law, and the carrier or his agents in exercising same may sell by public auction or by private treaty, and may at their discretion [illegible] with postage and advertisements.

36. If the ship is not owned by or chartered by demise to the Company or Line by whom this Bill of Lading is issued (it being the case notwithstanding anything that appears to the contrary) this Bill of Lading shall take effect only as a contract with the owner or demise charterer, as the case may be as principal made through the agency of the said Company or Line who act as agents only and shall be under no personal liability whatsoever in respect thereof.

New York, New York 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of Singapore Navigation Company, S.A., as Owner of the Steamship SINGAPORE TRADER, China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., for exoneration from or limitation of liability,

Plaintiffs and Third-Party Plaintiffs,

-against-

PITTSTON STEVEDORING CORP., and MURPHY PACIFIC MARINE SALVAGE COMPANY,

Third-Party Defendants,

and Related Cases.

Docket and file in
72 Civil 1275 (CLB)
~~71 Civil 5324 (CLB)~~
~~71 Civil 5321 (CLB)~~

U.S. DISTRICT COURT FILED MAR 26 1975 S.D. OF N.Y.

Before Honorable Charles L. Brieant, Jr.
U.S.D.J.

ADDITIONAL FINDINGS OF FACT
PROPOSED BY PLAINTIFFS
as found by the Court

77889-A

ADDITIONAL FINDINGS OF FACT
PROPOSED BY PLAINTIFFS

Please note: the Additional Findings of Fact Proposed by Plaintiffs are keyed to the Agreed Findings of Fact dated May 13, 1974.

3(a) In June, 1971, the SINGAPORE TRADER was inspected by representatives of plaintiffs herein, along with a surveyor in the employ of the American Bureau of Shipping. Repairs required by those parties were made, as listed in plaintiffs' Ex. 20 for I.D., Lin, Pl. Ex. 34, pp. 8, 9 and 10. Additional repairs performed in Hong Kong in August, 1971, before the ship departed for New York are as listed in Pl. Ex. 35 for I.D., Lin, Pl. Ex. 34, p. 6.

5(a) All of the ship's equipment was in good operating condition at and before the commencement of the voyage and at all material times thereafter, including at the time of the stranding. (Yang, Pl. Ex. 15 pp. 46-52, 58-60; Yeh Pl. Ex. 31, p. 8; Keogh T. 35-38, 65; Pl. Ex. 1.)

6(a) At all material times the SINGAPORE TRADER was in class with the American Bureau of Shipping with respect to her hull, machinery and equipment. (Lin, Pl. Ex. 34, pp. 10-11; Pl. Ex's. 20 and 21 for I.D.)

7(a) Captain Yang had been employed by plaintiffs for about three years as master of other ships owned or managed by those companies. He was considered to be a competent ship master by plaintiffs. (Lin, Pl. Ex. 34, pp. 11-12.) Captain Yang spoke and understood English well. He gave his deposition in English, after pp. 15-16, Pl. Ex. 15, including cross examination.

8(a) All of the SINGAPORE TRADER's officers and crew members were duly licensed and certificated by the Government of the Republic of China, Taiwan. (Yang Pl. Ex. 15, p. 8.)

10(a) The bill of lading contract contains the following applicable clauses:

The hand stamp which states:

> "ALL U.S.A. CARGO WILL BE DISCHARGED AT THE NEAREST NON-U.S. PORT(s) IN THE EVENT OF THE LONGSHOREMEN STRIKE AT THE U.S. EAST COAST CONTINUES AND CARGO FROM SUCH DISCHARGING PORT(s) TO BILL OF LADING DESTINATIONS ARE AT THE COST AND RISK OF CARGO."

Paragraph 5 of the bill of lading which states in material part:

> "5 - If the loading, carriage discharge or delivery is impeded or if there are reasonable grounds for anticipating that the same is or threatens to be impeded by the imminence outbreak or existence of *** lockouts, strikes *** or by absence from any cause of facilities for loading discharge or delivery the carrier and/or his agents and/or the Master (may if in his or their uncontrolled discretion he or they think it advisable) at any time before or after the commencement of the voyage abandon or suspend the voyage alter or vary or depart from the proposed advertised or agreed or customary route *** without being liable for any loss or damage whatsoever directly or indirectly sustained by the owners of the goods and all at the risk and expense of the owners of the goods. Anything done or not done by reason of or in compliance with the provisions herein before contained or any of them shall be deemed to be within the contract voyage.***" (Emphasis added.)

15(a) By the time the strike commenced at midnight on September 30, 1971 only 15%-20% of her cargo had been discharged. (Herlihy T. 160.)

16(a) Shortly after the strike commenced, plaintiffs' New York port agent, Gannet Freighting, Inc., by Mr. Herlihy, telephoned plaintiffs' office in Hong Kong and informed Mr. Lin of the strike. Consideration was then given by plaintiffs and Gannet to the options available to plaintiffs including:

1. Whether to have the ship remain in New York, if they could assume the strike might be of short duration; and

2. Whether to divert the ship from New York to another port where they could be reasonably certain the cargo could be discharged and delivered to the consignees, without delays caused by further labor problems. (Lin, Pl. Ex. 34, pp. 22-27; Herlihy T. 162-168.)

16(b) Between about October 1-3, 1971, Mr. Herlihy attempted to determine whether the strike could reasonably be expected to be of short or prolonged duration. (T. 163.) He correctly estimated that the strike would be prolonged. The strike actually ended on about November 28, 1971. (T. 203.)

16(c) Had the SINGAPORE TRADER remained in New York for the duration of the strike, no remaining cargo could have been discharged until some time after November 28, 1971. Some of the cargo was seasonal Christmas goods, and it could never have reached the market place in time if discharged after November 28, 1971. It was to the advantage and benefit of the cargo owners that the ship be re-routed to another port from which they could receive their cargo in a reasonable time to make the market.

16(d) The following are the approximate distances between New York and the listed nearby ports by sea and by land:

Foreign Ports	By Sea	By Land
Saint John, New Brunswick	486	425
Halifax	600	675
Bermuda	697	Sea Only
Nassau, Bahamas	952	Sea Only
St. Johns, Newfoundland	1093	600 By Sea to Halifax plus 675 By Land
Port AuPrince, Haiti	1372	Sea Only
Quebec City	1440	400
Kingston, Jamaica	1474	Sea Only
Montreal	1565	300
Veracruz, Mexico	2100	2200
U. S. Ports		
Detroit	2100	475

~~The distances by land between New York and Detroit, St. John, Halifax, Quebec and Montreal are not significantly different.~~

~~16(e) After Saint John, New Brunswick and Halifax, there~~ are a number of nearby foreign ports much closer to New York than Montreal or Quebec. While going to such ports may have been permitted under the hand stamp on the bill of lading, the commercial purpose of the transaction would not have been achieved and cargo would have received no benefit. They would not have received their cargo until long after the strike ended. The plaintiffs, reasonably, gave no consideration to discharging the cargo at any nearby ~~foreign ports other than those in~~ Canada.

~~16(f) After correctly concluding that the strike would~~ be prolonged, and between about October 2 or 3-6, 1971, Mr. Kerlihy attempted to determine the best alternative port to

discharge the SINGAPORE TRADER's cargo and deliver it. He contacted Gannet's agent in Canada, Colley Motorships Ltd. in Montreal, and possibly also Cullen Stevedoring Corporation which does business in various Canadian ports including Montreal, Saint John and Halifax, and asked their advice. Colley investigated the situation in the various Canadian ports and advised Mr. Herlihy (as they did other ship representatives) that the I.L.A. longshoremen in the suitable Canadian ports would not handle the SINGAPORE TRADER's "hot cargo" and that the smaller Canadian ports had inadequate or crowded facilities. (Herlihy T. 163-165, 186-190; Honegger, Pl. Ex. 32 pp. 5-7, 15-23, 46-48, 57-61, 65-68; Paulsen Pl. Ex. 43 pp. 6-9, 10-17, 26-36, 37, 40-48, 53-54; Quinn, T. 92; Smith T. 122; Schnare T. 240-243.)

16(g) Colley advised Gannet that the SINGAPORE TRADER could not be discharged in any Canadian port notwithstanding the fact that by doing so Colley lost a substantial agency fee. If the ship could have been discharged in Montreal, Colley would have been her port agent earning a fee of 2% of the inbound freight. (Not "trade" as erroneously reported.) (Paulsen, Pl. Ex. 43, pp. 15-16.) The freight was about $360,000. (Pl. Ex. 13 - C.) Two percent of the freight would be $7200. If the ship could have been discharged at any other Canadian port, Colley would have appointed a sub-agent and shared in the fee. Colley earned no fee when the ship went to Detroit. (Paulsen Pl. Ex. 43, pp. 16-17.) Mr. Paulsen, of Colley, considered it more reasonable for the ship to go to Detroit rather than attempt to discharge at any Canadian port. (Paulsen, Pl. Ex. 43, p. 17. The stevedoring rates for the Canadian ports were lower than either New York or Detroit. (Paulsen, Pl. Ex. 43, pp. 34-36.) Mr. Honegger also considered it more prudent to go to Detroit in all the circumstances. (Pl. Ex. 32, p. 61.)

16(h) Mr. Herlihy ~~next investigated the U. S. Great Lakes ports, some of which have non-I.L.A. labor.~~ He received a firm commitment from Detroit Harbor Terminals, the largest general cargo handling facility in Detroit, provided the SINGAPORE TRADER would be dispatched promptly. (T. 165-167, 174, 197-198, 205-206, 211-212.)

16(i) On October 6, 1971 Gannet recommended to plaintiffs that the SINGAPORE TRADER be re-routed to Detroit as the "best alternate port." Gannet's telex to plaintiffs (Pl. Ex. 13-X) fully expresses the information available to Gannet and to the plaintiffs at that time. ~~The telex states in material part:~~

"PRES. NIXON HAS INVOKED TAFT-HARTLEY ACT INJUNCTION ONLY AGAINST WEST COAST PORTS. WE FEAR THIS ACTION WILL MEAN INDEFINITELY PROLONGED STOPPAGE AT NEW YORK. WHILE ALWAYS POSSIBLE THEY MIGHT SETTLE, OUR BEST JUDGEMENT IN LIGHT OF PRESENT FACTS, IS THAT THEY WILL NOT.

CONSEQUENTLY, WE HAVE LOOKED FOR BEST ALTERNATE PORT AND HAVE GOT A FIRM COMMITMENT FROM DETROIT HARBOR TERMINAL, DETROIT MICHIGAN. WE RECOMMEND YOU ACCEPT, AND ASSURE YOU THAT WE WOULD TAKE THIS STEP IF VSL WAS OUR OWN, ALSO GIVE SAME RECOMMENDATION TO ANY OTHER OF OUR PRINCIPALS IN SAME SITUATION.

INSOFAR AS CANADIAN PORTS ARE CONCERNED, OUR AGENTS HAVE ADVISED AGAIN THAT ANY SUITABLE PORT SUCH AS ST. JOHN, HALIFAX, MONTREAL, WILL NOT ACCEPT THE VSL A/C UNION PROBLEMS. OTHER, SMALLER CANADIAN PORTS WHO DON'T HAVE UNION PROBLEMS ARE HOPELESSLY INADEQUATE IN WAREHOUSE SPACE, TRANSIT FACILITIES, ETC.

GREAT LAKES PORTS, CLEVELAND, DETROIT, ETC. DO NOT HAVE I.L.A. LABOR, AND DETROIT CAN ACCEPT VSL. OTHER PORTS ARE OVERCROWDED AND REFUSED."

* * *

"ACCOUNT NECESSITY TO MAKE CUSTOMS CLEARANCES, ETC. WE MUST HAVE YOUR DECISION WITHOUT FAIL TOMOW MORNING, ORDER TO COMPLETE PREP AND SAIL TOMOW EVENING. IT IS NEC MAKE EARLIEST POSS ARRIVAL DETROIT AS THAT PORT IS INCREASINGLY CROWDED AND MUST ANSWER STEVEDORE AIRMAILING TOMOW." (Emphasis added.)

16(J) On October 7, 1971, plaintiffs telexed Gannet confirming their agreement to re-route the SINGAPORE TRADER to Detroit (Pl. Ex. 13 Y.) ~~Plaintiffs acted reasonably in relying on Gennet's advice.~~ The possible saving in the stevedoring rate at Detroit played ~~no~~ some part in the decision to go to Detroit. ~~The rate was negotiated after it was determined that Detroit was the best alternate port.~~ (T. ~~211, 212.~~)

~~17(a) On about October 7, 8 and 9, 1971 Gannet mailed~~ notices of the re-routing of the SINGAPORE TRADER to Detroit to all the notify parties on the bills of lading. (Pl. Ex. 14, Herlihy T. 172.) It was impractical to consult with the cargo interests prior to the time the ship left for Detroit. About 250 notices were mailed to the notify parties with respect to the approximately 470 bills of lading issued to the cargo interests. (Herlihy, T. 160.) Plaintiffs do not suggest the cargo interests received notice of the re-routing to Detroit before the ship sailed. But they contend that the cargo interests had notice of the re-routing shortly after she departed and before they receive notice of the stranding.

17(b) No cargo interest ever informed Gannet in writing prior to Stranding of the Trader or otherwise, that it protested the re-routing of the SINGAPORE TRADER to Detroit as an unreasonable deviation in violation of the contract or that it thereby considered the contract terminate

Comment

Although challenged to do so by plaintiffs' attorneys, in open court, the cargo attorneys never produced a single cargo owner as a witness to testify on what it did when it received the diversion notice (Pl. Ex. 14), or whether it considered the ship to be engaged on an unreasonable deviation. The reason is obvious. No cargo owner could have any reasonable objection to

the diversion to Detroit considering all the circumstances, particularly that Detroit was the only port where they could be reasonably certain of having the cargo discharged and delivered in a reasonable time; Detroit is in the United States, and is about the same distance from New York or the various Canadian ports. It was more suitable than any Canadian port - none of which were reasonably available to the SINGAPORE TRADER.

17(c) The sole purpose in diverting the SINGAPORE TRADER to Detroit was that Detroit was the only port where plaintiffs could be reasonably certain of discharging her cargo and delivering it to the consignees without further delays caused by labor problems or unsuitable or crowded facilities.

17(d) Prior to diverting the SINGAPORE TRADER to Detroit, no commitments had been made for a return cargo to the Far East. (Herlihy T. 155, 156, Pl. Exs. 13 F, J and L.)

17(e) After the SINGAPORE TRADER was diverted to Detroit, plaintiffs made some efforts and had some hope of obtaining a return cargo in Saint John or other Canadian port. (See telex dated October 11, 1971 Pl. Ex. 13 AA, eighth paragraph; Lin, Pl. Ex. 34 pp. 55-58.) No commitments for a return cargo were ever made. (Herlihy, T. 175)

18(a) The inspection was pursuant to the Seaway Regulations as outlined in the Seaway Handbook, Pl. Ex. 22, p. 6 paragraph 5, which stated:

"5. (1) No vessel shall transit unless

(a) it is properly trimmed and in a condition determined by the Authority or an officer to be safe and satisfactory to it or him; and

(b) it is equipped with such apparatus, equipment or machinery as the Authority deems necessary for safe transit.

(2) An officer may refuse to allow a vessel to transit when, in his opinion,

(a) the vessel, its cargo, equipment or machinery are in such a condition as to prevent safe or expeditious transit by that vessel; or

(b) the vessel is manned with a crew that is incompetent or insufficient in numbers.

(3) Where an officer refuses to allow a vessel to transit, that vessel shall not transit until an officer grants it specific permission to do so." (Emphasis added.)

18(b) The SINGAPORE TRADER passed the Seaway inspection. The SINGAPORE TRADER's approximate drafts were noted by the Seaway inspector in his report (Pl. Ex. 23). Apparently her trim was "safe and satisfactory" to the Seaway inspector.

18(c) The ship's actual drafts were 7'7" forward and 20'9" aft, for a drag of 13'2". (Keogh, T. 36; Pl. Ex. 1.)

21(a) Pilot Keogh is an experienced pilot. He commenced going to sea in 1942 as a deckhand. He received his master's license in 1950, and he received his pilot's license in 1954. Since 1954 he has served continuously as a pilot. Since 1960 he acted as a pilot of ships in the Cornwall to Kingston district making 85 to 100 trips per year. At the time of the stranding he had 1,000 or more trips as pilot in that district. (T. 24-26.) Captain Yang considered pilot Keogh to be a good pilot based on his observation of the pilot. (Pl. Ex. 15, p.55.)

21(b) Captain Keogh's pilotage district is approximately 103 statute miles, or approximately 87 nautical miles in length (T. 30). His pilotage district is marked on Pl. Ex. 2, a chart showing the St. Lawrence River and the Great Lakes. His district is shown in more detail on the charts marked Pl. Ex's. 3 through 9. It includes three locks, the Snell, where Pilot Keogh boarded the SINGAPORE TRADER, and the Eisenhower and the Iroquois locks. The locks are only about 100 feet in width. The charts show the navigable channel to be winding, with many very narrow portions, in places only 300-400 feet wide. (Based on chart

measurement.)

21(c) When going through the three locks, no tugs were used, the maneuvers of starting, stopping and slowing the ship were accomplished solely with the ship's engines and rudder. Careful seamanship was required in navigating through the district. (T. 33-35).

21(d) Prior to the time of the stranding, Captain Keogh experienced no difficulty with the ship's trim, equipment, engines or rudder, in his navigation through the many turns in the narrow channels and in stopping and starting in and out of to maneuver/ the narrow locks. The Chinese crew of the SINGAPORE TRADER displayed no difficulty in understanding and executing Captain Keogh's commands for steering and speed (T. 35-36,65). Pilot Keogh had no complaints regarding the ship or the cooperation of her crew - and none were stated in his report, Pl. Ex.1.

25(a) The watch officer, chief officer, Fang Chun Chang spoke and understood English well. His deposition, Pl. Ex. 30, was given primarily in English, commencing after p. 6. He reverted to Chinese in answering one question about loading the cargo on pp. 8-9. The remainder of his deposition, including cross examination was entirely in English. The ship's deck log books, Pl. Ex.'s 16 and 40 are written partly in English. Chief Officer Chang had no difficulty understanding the pilot's commands (Pl. Ex. 30, p. 19).

26(a) Quartermaster Yeh did not understand English language conversation, but he demonstrated repeatedly throughout his deposition, Pl. Ex. 31, that he understood English commands for steering. (pp. 12, 14, 15, 28.) The master of the SINGAPORE TRADER sometimes gave steering orders in English before the ship

entered the Seaway. (Pl. Ex. 15, p. 132.). The pilots in the Panama Canal and in New York harbor also give commands in English.

27(a) The wind was estimated by Captain Yang and watch officer Chang as blowing from the south at a velocity of 4 - 6 knots, (Force 2 on the Beaufort scale). (Yang, Pl. Ex. 15, p.59 Pl. Ex. 26, para. 22(c) and (d); Chang, Pl. Ex. 30, p. 16; Pl. Ex. 27, para 1.) The pilot estimated the wind as from the southwest at a velocity of 10 - 15 knots; and he estimated the current as setting northeast at a velocity of 1 knot. (Pl. Ex. 1, Part 3 A.)

27(b) Pilot Keogh never requested that the ship's radar or fathometer be put into operation (T. 36-37). There appeared to be no gyro error (T. 37). Pilot Keogh did not request that a lookout be placed on the bow, and he did not consider a lookout on the bow to be necessary (T. 37,38,79.)

27(c) ~~Pilot Keogh took no action to fix the position of the SINGAPORE TRADER on approaching Clayton, New York, or thereafter before the stranding (T. 45-46). He~~ The Pilot never requested the mate on watch to fix the SINGAPORE TRADER's position using the ship's navigational equipment prior to the stranding and Pilot Keogh did not consider it necessary at that time (T. 64). The positions marked by Pilot Keogh on the chart, Pl. Ex. 10 identified as "approximately 0400" and "approximate position 0410" are estimates, ~~apparently based on "seamen's eye."~~

27(d) In giving commands to change the SINGAPORE TRADER's course, the pilot used commands of "port," "starboard," "easy," "steady," or "midship and steady." (T.39-40.) Pilot Keogh did not specify compass courses for the helmsman to steer. (T.40.) (See also Pl. Ex. 27.)

27(e) According to the nautical charts for the area, on passing Clayton, New York, the proper channel course is 246 degrees. This channel course is noted plainly on the charts, see Pl. Ex's. 10 and 12.

27(f) According to Pilot Keogh, and as sketched on Pl. Ex. 10, as the SINGAPORE TRADER was approaching the vicinity of Clayton, New York, and at approximately 0400 hours, her course was directed somewhat to the left of the proper channel course of 246°. When abreast of Clayton, and approximately midway between the 0400 and 0410 estimated positions on Pl. Ex. 10, the SINGAPORE TRADER's heading was directed somewhat to the right of 246°, to clear the buoy marked "B 225" and also to clear Bartlett Point. (T. 54 - T. 55.) This heading was approximately 254° - 256° (Pearson, T. 308 and Pl. Ex. 37). On passing abeam of Bartlett Point at approximately 0410 hours, Captain Keogh ordered the engines full ahead (T. 46-47). (The ship's bell book, Pl. Ex. 11, shows the speed was reduced from full ahead to half ahead at 0402 hours on October 15, 1971, and increased to "full ahead" again at 0411 hours and increased further to "sea speed" at 0412 hours.) Pilot Keogh testified that on passing Bartlett Point at approximately 0410 hours, he "told the man at the wheel to come to port," (T. 47) and that his intended course at that time "should be 246, in that vicinity." (T. 48.) (He apparently made no allowance for the wind and current.) Pilot Keogh testified the SINGAPORE TRADER turned to port at that time and he steadied the vessel by reference to various lights and buoys (T. 48-56). Pilot Keogh testified he did not check the gyro compass course at that time and he did not recall the helmsman making any report as to the gyro compass heading at that time (T. 59). He next went into the chartroom

to fill out his source form (T. 56-57).

27(g) Watch officer Chang testified that after he came on watch at about 0355 hours, the following occurred:

(1) He estimated the ship's position on the chart (Pl. Ex. 12, red circle marked "A"), the ship's course was then 231° on the gyro compass and the speed was full ahead. He did not fix the ship's position, or determine from the chart what her proper channel courses should be. (Pl. Ex. 30 pp. 13-15.) The pilot gave his commands in English which were understood and followed by the watch officer and the helmsman. (Pl. Ex. 30, pp. 19-20.) When changing the course of the ship, the pilot used commands such as "port," "starboard," "easy" and "steady." (Pl. Ex. 30, pp.16-17.

(2) At 0402 hours, the pilot ordered the speed reduced to half ahead, and he changed the course to the right and the ship was steadied on 255° on the gyro compass. The pilot did not specify the numerical course. The pilot then left the wheelhouse and went into the chart room. (Pl. Ex. 30 pp. 17,18,41,42)

(3) At 0411 hours, the pilot ordered the speed increased to full ahead and at 0412 hours the pilot ordered the speed further increased to sea speed. The pilot was in the wheelhouse when those commands were given. (Pl. Ex. 30 pp. 17-18)

(4) At about 0420 hours, the watch officer felt two abnormal shocks, apparently as the ship was grounding. The pilot then came into the wheelhouse through the port side door and pulled the engine telegraph handle to full astern, recorded at 0420 hours in the deck bell book, Pl. Ex. 11. At 0424 hours the engines were ordered stopped. (Pl. Ex. 30, pp. 18-19; see also Pl. Ex. 27.)

27(h) Quartermaster Yeh testified that when he took over the steering at 0355 hours, the course was 231° true on the gyro compass (Pl. Ex. 31 p. 9). After 0400 hours the pilot gave the orders "hard starboard," "midships," then "steady," and the ship was steadied on 255° true. (Pl. Ex. 31, p. 28, 29, 30, 31) The pilot did not specify the numerical compass course to steer and the pilot did not ask on what course the ship was steadied. (Pl. Ex. 31 p. 16) The last course prior to the stranding was 255° (Pl. Ex. 31, p. 13) After giving the above orders, the pilot went into the chart room. At p. 28 the quartermaster testified: "After a little while he came out, looked to both sides of the bridge and he went to the chart room again just a few minutes and the ship couldn't move, and he came out, the ship was already aground".

27(i) Pilot Keogh testified he was in the chart room "maybe 10 minutes" (T. 57) immediately prior to the stranding. He said he came back into the wheelhouse immediately prior to the stranding. When he came back on the bridge he observed the vessel was heading off course, he observed Quebec Head light close on the starboard bow (T. 57). At almost the same time he saw Blanket Island on the port side of the ship (T. 57). He immediately ordered the helm to starboard and ordered the engine reversed (T. 57). He could not say that the vessel turned to the right after he ordered the helm to starboard, the full astern engine order and the rudder order to the right were given almost at the same time as the stranding (T. 58). After the vessel stranded he observed the compass heading of the SINGAPORE TRADER to be 255° on the gyro compass. (Pl. Ex. 1, para. 3B) While he was in the chart room which is immediately

behind the bridge, he did not feel the vessel turning, he testified he felt nothing unusual (T. 59).

27(j) Captain Yang was awakened by an abnormal shock on the ship (Pl. Ex. 15, p. 56). Shortly thereafter, a quartermaster came to the captain's cabin and reported the ship had run aground (Pl. Ex. 15, p. 57) and the captain went to the bridge. Captain Yang fixed the ship's position by taking a series of gyro compass bearings and plotted the position on Pl. Ex.12, northeast of Blanket Island. He used the lights on Quebec Head, Bartlett Point, and Light No. 229, each of which is circled on Pl. Ex. 12 (Pl. Ex. 15, pp. 15-16). Since the three bearings crossed at one point, Captain Yang concluded there was no gyro error. (Pl. Ex. 15, p. 60.) Captain Yang also used the ship's radar and took a measurement from the ship's position aground to Blanket Island and the radar appeared to be in good condition. (Pl. Ex. 15, p. 61). According to Captain Yang, the ship's gyro compass heading while aground was 257° (Pl. Ex. 15, p. 60). After the stranding and on October 16, 1971, Captain Yang sent a radio message to plaintiff in Hong Kong, the last sentence of which states "aground owing pilot fault," (Pl. Ex. 28 V; Pl. Ex. 15, pp. 63-64). Captain Yang's opinion was based on the statements of the watch officer and the helmsman, now marked Pl. Ex. 27.

28(a) The SINGAPORE TRADER stranded outside the navigable channel - which in itself is substantial evidence of an error in navigation. At the time of stranding her compass heading was approximately 255° - she was approximately 9° to the right of the proper channel course of 246° for the area.

28(b) ~~Determining the cause of the stranding involves primarily resolving~~ the conflict in the evidence between the

pilot on the one hand and the watch officer and quartermaster on the other hand. Clearly, the ship was placed on a course of approximately 255° on passing Clayton shortly after 0400 hours. The sole issue is whether the course was changed to 246° at about 0410 hours on passing Bartlett Point as the pilot probably intended - and if so, whether it was changed back to 255° by the quartermaster prior to the stranding. The pilot felt no turns while he was in the chart room. He felt nothing unusual.

28(c) I conclude the ship's course was not changed after being set approximately on course 255° by pilot Keogh shortly after 0400 hours - which directly caused the stranding. The pilot probably intended to change the ship's course to about 246° on passing Bartlett Point - but the pilot apparently became distracted in the chartroom in filling out his source form; and having failed to either specify the numerical course or check the numerical course on wich the ship steadied, he apparently failed to realize the danger of continuing on a course of approximately 255°. (Pl. Ex. 37, Pearson, T. 307-313.)

28(d) The stranding would not have occurred but for the pilot's placing the ship on a course of approximately 255° shortly after 0400 hours and then remaining in the chartroom for a substantial period prior to the stranding - where he was not in a position to correct his initial error.

28(e) Probably the stranding could have been avoided had any of the following steps been taken:

(1) Had numerical courses been specified or checked by the pilot (Pearson, T. 322-323; Horka, T. 352-353), or had the quartermaster reported the course on which he steadied.

(2) Had the watch officer merely checked the course steadied on (255°) against the proper channel course for the area (246°) as clearly marked on the chart, Pl. Ex. 12, he would have realized the ship was off her proper course. He had the chart available and had estimated the ship's position shortly after going on watch.

(3) Had the radar been in use, Blanket Island which is unlighted, probably would have been observed by the watch officer in time to alert the pilot and/or take action to avoid collision.

(4) Had fixes been taken by the watch officer using gyro compass bearings and/or the radar, and had the fixes been plotted on the chart, the watch officer would have quickly realized the vessel was off course.

(5) Had the fathometer been turned on, the watch officer would have noted the depths of water becomming shallower. If the depth were compared with the chart, this might have alerted the watch officer to the danger in time to take avoiding action.

28(f) As shown on the attached diagrams, Pl. Ex. 39 for I.D. (calculations for estimated current only), if on course 246° the vessel would be set approximately 900 feet to the right and if on course 255° the vessel would be set approximately 1200 feet to the right. In both cases the vessel would be set about 2° to the right of the course steered. Thus, to avoid the effect of the current, the ship's course should have been set about 2° to the left of the desired course. (See also Pearson, T. 321.) The cargo attorneys refused to verify or stipulate the accuracy of the attached calculations although

offered time and equipment to do so. However, the court may take judicial notice of these simple calculations. Also attached is a copy of an extract from "BOWDITCH, AMERICAN PRACTICAL NAVIGATOR" (1962), published by the U.S. Naval Hydrographic Office, HO Pub. 9, pp. 217-219, to explain the current calculations. The wind would also tend to set the vessel to the right, however, the amount of set has not been calculated because the estimates are conflicting, the wind was light and the calculations are very complex (T. 371). Captain Pearson erred in making his calculation on current. The question on T. 316 concerned current only, and his vector diagram as explained on T. 317 and T. 319 included only vectors for ship's course and current. At T. 319 Captain Pearson noted the difficulty in being accurate because of the scale of the chart. Captain Pearson's estimate of the wind and current (T. 315) is similar to his erroneous calculation of current only. (T. 316, 319) Plaintiffs submit the wind may be disregarded.

I find the foregoing facts except as stricken out and initialed. See Memorandum decision herein dated March 26, 1975

Charles L. Brieant
U. S. D. J.

28(h) If on course 246° the estimated current, as calculated above, alone, would not account for the stranding - unless the SINGAPORE TRADER was already far to the right of the center of the channel. Blanket Island is about 2600 feet from the center of the channel. If on course 255° on passing Bartlett Point (as shown on Pl. Ex's. 10 and 37), depending on the distance the ship passed off this Point, and depending on the actual strength of the current, the current would have contributed to setting the ship into the shoal water at Blanket Island. This is illustrated on the attached chart, a copy of a portion of Pl. Ex. 10.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of Singapore Navigation Company, S.A., as Owner of the Steamship SINGAPORE TRADER, China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., for exoneration from or limitation of liability,	:	72 Civil 1275 (CLB) 71 Civil 5324 (CLB) 71 Civil 5321 (CLB)
Plaintiffs and Third-Party Plaintiffs,	:	
-against-	:	
PITTSTON STEVEDORING CORP., and MURPHY PACIFIC MARINE SALVAGE COMPANY,	:	
Third-Party Defendants,	:	
And Related Cases.	:	

Before Honorable Charles L. Brieant, Jr.
U.S.D.J.

CONCLUSIONS OF LAW
PROPOSED BY PLAINTIFFS

CONCLUSIONS OF LAW PROPOSED BY PLAINTIFFS

1. This is a case of admiralty and maritime jurisdiction.

2. The court has jurisdiction over the subject matter and the parties.

3. The rights of the plaintiffs and the cargo claimants are governed by the Carriage of Goods by Sea Act, 46 U.S.C. § 1300, et seq.

4. The SINGAPORE TRADER was in all respects seaworthy, and properly manned, equipped, and supplied.

5. The stranding of the SINGAPORE TRADER and all resulting loss and damage was caused by an error or errors in navigation by her compulsory pilot and/or by her helmsman or watch officer. Hence under the terms of the bill of lading and the statute, 46 U.S.C. § 1304(2)(a), the plaintiffs are not liable for damage to cargo caused by error or neglect in navigation. The Temple Bar, 137 F.2d (4 Cir. 1943); Director General of India Supply Mission v. SS Janet Quinn, 335 F. Supp. 1329 (S.D.N.Y. 1971); In the matter of the Complaint of Grace Line Inc., Plaintiff as owner of the Steamship SANTA LEONOR for exoneration from or limitation of liability unreported opinion of Judge Thomas P. Griesa (S.D.N.Y. 1973); and Director General of India Supply Mission v. SS MARU, 459 F.2d 1570 (2 Cir. 1972).

6. The re-routing of the SINGAPORE TRADER from New York to Detroit, upon the commencement of the longshoremen's strike at New York was either:

(a) Not a deviation; or

(b) If it was a deviation, it was a reasonable deviation. The "true test" to determine whether an alleged

departure from the contract voyage is a deviation, or if it is a deviation whether it is reasonable, is what departure from the contract voyage might a prudent person controlling the voyage at the time make and maintain, having in mind all the relevant circumstances existing at the time, including the terms of the contract and the interests of all parties concerned, without obligation to consider the interests of any one as conclusive. American Cyanamid Co. v. Booth SS Co., 99 F. Supp. 232, 237 (S.D.N.Y. 1951), aff'd, per cur. 195 F.2d 529 (2 Cir.). Here, the parties agree that it was permissible for the SINGAPORE TRADER, under the terms of the bill of lading contract, to leave New York upon the commencement of the strike. The SINGAPORE TRADER was permitted by the hand stamp on the face of the bill of lading to go to the "nearest non-U.S.A. port(s)," and she was permitted to go to any alternate port by Clause No. 5 of the bill of lading if delivery was impeded or there were reasonable grounds to anticipate delivery would be impeded by strikes or absence of facilities. Here, plaintiffs have established by a preponderance of the evidence, that based on the investigations and recommendations made by responsible persons in the shipping industry on whom plaintiffs reasonably relied, the plaintiffs were justified in concluding that Detroit was the "best alternate port" at which they could be reasonably sure of discharging the SINGAPORE TRADER's cargo and delivering it without any further delays - because they were informed the I.L.A. labor at the nearby major Canadian ports would have refused to handle the ship's "hot cargo" and the smaller Canadian ports were unsuitable in that they had crowded or inadequate facilities. (In the circumstances plaintiffs had a duty to disregard the hand stamp on the bill of lading to avoid foreseeable delays at the Canadian ports. The MORMACSAGA, [1968] 2 Lloyd's List 184, 191 (Canada).) Further

plaintiffs have established that the sole purpose in going to Detroit was to discharge and deliver this cargo - serving primarily the cargo interests - and fully achieving the commercial purpose of the transaction, although it involved substantial detriments to plaintiffs in the form of increased voyage costs. Further, the contract (Clause 5) expressly sanctioned alternate places of delivery in the event delivery was impeded or if there were reasonable grounds to anticipate delivery would be impeded by strikes or absence of facilities. In these circumstances I conclude the re-routing of the SINGAPORE TRADER to Detroit was not a deviation. Kroll v. Silverline Ltd., 116 F. Supp. 443 (N.D. Cal. S.D. 1953); and G. H. Renton & Co., Ltd. v. Palmyra Trading Corporation (The CASPIANA), [1956] 2 Lloyd's List 379, 391 (House of Lords).

7. If the re-routing of the SINGAPORE TRADER to Detroit is considered a deviation, the Carriage of Goods by Sea Act would then come into operation. American Cyanamid, supra; Kroll, supra. And for the same reasons stated in Conclusion 6 above, I conclude the plaintiffs have carried their burden of proving the deviation was reasonable. E.C.L. Sporting Goods v. United States Lines, Inc., 317 F. Supp. 1245, 1248 (D. Mass. 1969); Hirsch Lumber Co. v. Weyerhauser Steamship Co., 233 F.2d 791, 795 (2 Cir. 1956).

8. If by any chance the re-routing of the SINGAPORE TRADER to Detroit can be considered an unreasonable deviation, the cargo interests who had notice of the deviation while it was in progress, failed to make any protests to the plaintiffs or reserve their rights to terminate the contract. The cargo interests have thus waived their right to raise the issue of unreasonable deviation. Farr v. Hain SS Co. Ltd., 121 F.2d 940, 944 (2 Cir. 1941).

9. All claims for cargo damage resulting from the stranding are dismissed.

Plaintiffs are entitled to a judgment:

(a) Exonerating them from liability for cargo losses or damages resulting from the stranding of the SINGAPORE TRADER.

(b) That they recover on their counterclaim the unpaid general average contributions with interest.

(c) That they recover on their counterclaim the outstanding freight with interest.

(d) That they recover their costs of this action.

Docket and file again in 72 Civ 1275
ack'd/USDJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED SEP 17 1974 S.D. OF N.Y.

In the Matter
of the
Complaint of Singapore Navigation Company, S.A. as Owner of the Steamship SINGAPORE TRADER, China Marine Investment Co., Ltd. for exoneration from or limitation of liability,

Plaintiffs and Third-Party Plaintiffs,

-against-

PITTSTON STEVEDORING CORP. and MURPHY PACIFIC MARINE SALVAGE COMPANY,

Third-Party Defendants,

and Related Cases.

U.S. DISTRICT COURT FILED MAR 26 1975 S.D. OF N.Y.

File-IN 72 Civil 1275 (CLB)
71 Civil 5324 (CLB)
~~FILE-IN~~ 71 Civil 5321 (CLB)

~~PROPOSED~~ FINDINGS OF FACT
ON BEHALF OF
CARGO CLAIMANTS
as found by the Court

1. The bills of lading issued by the carrier called for the discharge of all cargo at the port of New York, with the nearest non-U.S. port or ports as alternatives in case of a strike.

2. The possibility of a longshoremen's strike in New York was anticipated by the plaintiff-petitioner prior to loading of cargo in Hong Kong.

3. In anticipation of the longshoremen's strike in New York the carrier claused each bill of lading by stamping on the face thereof the following:

> "ALL USA CARGO WILL BE DISCHARGED AT THE NEAREST NON-U.S. PORT(S) IN EVENT OF THE LONGSHOREMEN STRIKE AT THE U.S. EAST COAST CONTINUES AND CARGO FROM SUCH DISCHARGING PORT(S) TO BILL OF LADING DESTINATIONS ARE AT THE COST AND RISK OF CARGO."

which meant that if the cargo could not be discharged in New York, it was to be discharged at the nearest feasible non-United States port or ports.

4. The stamped clause was an overriding obligation of the shipowner and superceded or modified all other printed clauses of the bill of lading.

5. ~~Three days~~ After the arrival of the SINGAPORE TRADER in New York, and following the discharging of ~~a small~~ amount of cargo, a longshoremen's strike occurred.

~~6. While the bills of lading called for discharge at the nearest non-United States port or ports in the event of a longshoremen's strike in New York, Mr. Lin did not inquire or at least sufficiently inquired, whether the SINGAPORE TRADER could have discharged at Eastern Canadian ports.~~

~~7. Colley Motorships, the SINGAPORE TRADER's Montreal agent, never inquired of tis Canadian sub-agents whether the SINGAPORE TRADER could, under the terms and conditions stamped on the face of the bills of lading, have discharged at Canadian ports.~~

~~8. The nearest non-United States ports were~~ Halifax, St. John, Quebec and Montreal, Canada. The ports of Halifax, Quebec and Montreal ~~were~~ available for discharge of the SINGAPORE TRADER and the I.L.A. and the National Harbours Board would have allowed the SINGAPORE TRADER to ~~enter those ports and discharge the cargo.~~

9. ~~Also~~ Available for discharge of the SINGAPORE TRADER were Sydney, Nova Scotia, Levis and Valley Field.

CATHERINE BARRAGHER
Notary Public, State of New York

NATALIA PABON

10. The SINGAPORE TRADER was directed to Detroit, Michigan instead of to Canadian ports for discharge as required under the bills of lading.

11. The ordering of the SINGAPORE TRADER to Detroit by Mr. Lin was ~~solely~~ at least in part for economic convenience of the shipowners and constitutes an unreasonable deviation by the carrier from the terms and conditions of the bills of lading.

12. Mr. Lin's failure to order the vessel to discharge at ~~Halifax, Quebec, Montreal, Levis,~~ Valleyfield or ~~Sydney,~~ was an unreasonable deviation.

13. The strike did not come as a surprise to the plaintiff or its agents.

14. Mr. Lin, the President of the shipowing company ~~was personally involved in all of the investigations and~~ personally ordered the SINGAPORE TRADER to Detroit.

15. The decision to send the ship to Detroit was a unilateral decision on the part of the plaintiff.

16. Plaintiff did not consult with the cargo owners before sending the ship to Detroit.

17. The notice that was sent to the consignees was mailed ~~the day~~ after the ship left New York and would have reached the consignees after the deviation commenced.

18. Plaintiff knew that much of the goods involved were Christmas goods, the value of which depended upon timely delivery.

19. The Plaintiff failed to prove that the deviation was reasonable and in fact the court finds that in this instance it was unreasonable and inexcusable.

20. The Plaintiff failed to prove that the loss must have occurred even if there were no deviation.

21. Plaintiff failed to prove the lack of privity between the deviation and the managing agents or officers of the ship-owing company.

~~22. The change in the testimony on the trial and the inconsistencies in Herlihy's testimony make his entire rendition incredible.~~

23. The pilot testified that he had no idea what caused the vessel to strand ~~and there was no other testimony as to the cause of the accident.~~

~~24. The testimony of the pilot at trial regarding~~ the language difficulties with the ~~crew was~~ shown to be incorrect and ~~inaccurate~~ by the testimony of Mr. Vincent ~~Prager, a Canadian attorney.~~

~~25. The crew could not effectively~~ communicate ~~with the pilot, a fact known to the vessel owner.~~

26. The blind area forward of the vessel, resulting from her trim condition extended for approximately one-half mile.

27. Blanket Island could have been seen at a distance of at least one-half mile on the night of the stranding.

28. The vessel could have been navigated by going out to the bridge wings to avoid the blind spot, ~~however, this was unsafe and impractical because this position was too far removed from the navigational control area.~~

29. The vessel owner's representatives were aboard at Hong Kong, the last port of loading in the Far East, and were aware of her loaded condition on departure from that port.

DATED: New York, New York
September 16, 1974

I find the foregoing facts except as stricken out and modified x
See Memorandum decision herein dated March 26, 1975
Charles L. Brieant Jr
U. S. D. J.

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
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CATHERINE PARRAGHER
Notary Public, State of New York
No. 41-5233015

The name signed must be printed beneath
NATALIA PABON

Docket and file again in
72 Civ 1275
CLB/JGDS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Filed

In the Matter
of the
Complaint of Singapore Navigation Company, S.A. as Owner of the Steamship SINGAPORE TRADER, China Marine Investment Co., Ltd. for exoneration from or limitation of liability,

Plaintiffs and Third-Party Plaintiffs,

-against-

PITTSTON STEVEDORING CORP. and MURPHY PACIFIC MARINE SALVAGE COMPANY,

Third-Party Defendants,

and Related Cases.

U.S. DISTRICT COURT FILED SEP 17 1974 S.D. OF N.Y.

U.S. DISTRICT COURT FILED MAR 26 1975 S.D. OF N.Y.

File-in 72 Civil 1275 (CLB)
71 Civil 5324 (CLB)
Filed 71 Civil 5321 (CLB)

CLB/JGDS

Supplemental
~~PROPOSED CONCLUSIONS OF LAW ON BEHALF OF CARGO CLAIMANTS~~

1. The unreasonable deviation in this case is a classic in the sense of geographical departure from the voyage.

2. Plaintiff had the burden of proving by a preponderance of the evidence that the deviation was one which was justified.

3. An unreasonable deviation releases the cargo owners from all limitations on the carrier's liability under the contract of carriage.

4. An unreasonable deviation deprives the carrier of all exemptions, statutory or otherwise, and imposes upon her at least the liability of a common carrier that is of an insurer.

this 16th day of September, 1974

CATHERINE FAGLIARONE

5. Following an unreasonable deviation, it is immaterial how the damage was caused, that is, error of navigation is no longer a defense.

6. The personal order of the shipowner to send the SINGAPORE TRADER to Detroit is the clearest privity imaginable.

~~7. To violate a specific destination in a bill of lading is automatically unreasonable without just cause.~~

CLB
JSD

8. The duty of plaintiff and Mr. Lin to discharge at the nearest non-U.S. port or ports in the event of strike was a non-delegable duty.

9. There is no waiver by consignees here of the unreasonable deviation.

~~10. The faults of the general agents are the faults of the shipowners for purposes of proving privity in a limitation case.~~

CLB
JSD

~~11. Privity under the limitation act is the same as design and neglect under the fire statute.~~

12. The applicable statute governing the obligation of the plaintiff to make the vessel seaworthy is the U.S. Carriage of Goods by Sea Act, 42 U.S.C. 1300, et seq. and specifically Section 1303 of that act.

CLB
JSD

13. Plaintiff has ~~failed to~~ proved its exercise of due diligence as required under Section 1303.

14. Section 1304(2) of the U.S. Carriage of Goods by Sea Act provides various exceptions from liability. Plaintiff had the burden of going forward to show that the stranding resulted from one of those excepted causes. Plaintiffs carried ~~had failed to carry~~ the burden in this respect, except for the unreasonable deviation

CLB
JSD

~~15. The limitation of liability claimed by plaintiffs is subject to the limitation of liability statutes, 46 U.S.C. §183, et seq. The limitation of liability statute requires~~

So found March 26, 1975

Charles L. Brieant Jr.

USDJ

this 16th day of September, 1914

CATHERINE FARRAGHER

The name signed must be printed beneath

Plaintiff to show that the cause of the stranding herein was without the privity or knowledge of the vessel owner. The Plaintiff has failed to sustain the burden of proof in this respect and are not entitled to any limitation of, or exoneration from liability.

16. The vessel was unseaworthy in several respects and said unseaworthiness was within the privity and knowledge of the vessel's owner. Plaintiffs have failed to carry their burden to show the unseaworthiness was a result of any cause for which they would not be liable under the applicable statutes.

DATED: New York, New York
September 16, 1974

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for Certain Cargo Claimants
96 Fulton Street
New York, New York 10038

this 16th day of September 1974

CATHERINE FARRAGHER
Notary Public, State of New York
No. 41-6231015
Qualified in Queens County

The name signed must be printed beneath

NATALIA PABON

Memorandum Decision of Brieant, J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Civ. 1275-CLB

In the Matter

of the

Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER and China Marine Investment Co., Ltd. and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability.

On October 15, 1971, at 0420 hours, the Steamship SINGAPORE TRADER (hereinafter "the vessel", or "the Trader") stranded northeast of Blanket Island in the St. Lawrence River or Seaway while upbound for Detroit, Michigan. Thus ended the voyage begun on August 22, 1971 at Hong Kong, destination New York, as a common carrier of miscellaneous packaged dry cargo, "mainly plastic flowers, toys, Christmas decorations, etc., in paper cartons," consigned on approximately 472 separate Bills of Lading to almost that many consignees, represented in turn by about 250 "notify parties," such as customs brokers and freight forwarders.

By their complaint filed March 27, 1972, the owner(s) seek exoneration, or alternatively, limitation of liability, pursuant to 46 U.S.C. §183. Cargo claimants oppose. The proceeding was tried on May 14, 15, 20 and 22, 1974; post-trial briefs and proposed findings and conclusions have

been received and considered. At trial, the parties agreed to litigate only (1) the cause of the stranding; (2) a claim by cargo interests of unreasonable deviation; and (3) a claim of unreasonable delay in salvage. The latter claim was withdrawn during trial.

Proximate Cause of Stranding

While proceeding at her approximate sea speed of 13 kts., with clear visibility, the Trader passed out of the channel and into shoal water immediately east of Blanket Island, as indicated by the pencil mark on Lake Survey Chart 117 (U.S.), Exhibit 10 in evidence. Soundings after grounding were stated as approximately 15 feet. The vessel did not touch the island. Her draft was approximately 7 feet 7 inches forward and 20 feet 9 inches aft. She had the services of a fully qualified, experienced, compulsory pilot, Vinton Keogh, assigned since 1960 to the Seaway district between Kingston, Ont. (Massena, New York) and Cornwall, Ont. (Cape Vincent, New York). He boarded at 1955 hours on the previous day and had advised successfully with respect to Trader's navigation for almost seven and one-half hours, from the Snell Lock at Massena through two locks to the point of stranding, about two and one-half miles beyond Clayton, New York, and about twelve miles from Cape Vincent.

A Chinese watch officer, Chief Mate Fang Chun Chang, who speaks some English, was on duty, a helmsman or quartermaster was steering, and a seaman was on call for errands or assistance. The pilot gave simple commands in English, such as "port" and "starboard", "easy and steady" or "midships and steady". The pilot was directing the vessel by "seaman's eye" with reference to numerous readily identifiable navigation aids, lights, buoys and shore

points, a practice not unusual nor negligent under the circumstances and in view of the excellent visibility. He stated no compass courses, although the helmsman usually reported the course on the compass after executing an order to steady. Under such procedure the Trader had passed through a long and sometimes narrow channel with no difficulty. The pilot had no problem with any language barrier and neither the vessel nor her equipment presented special difficulties of any kind.

At approximately 0410 on October 15, 1971, when the vessel was approximately abeam of Bartlett Point, New York, west of Clayton, New York, the pilot ordered full ahead on the engines, and "told the man at the wheel to come to port". Thereafter, he steadied the ship by seaman's eye on an approximate course which he believed to be "in the vicinity of 246 degrees." He could see flashing green light No. 229, on the New York shore, west of Clayton, to port, and the Wolfe Island Light (Quebec Head) to starboard.

Believing that he had the vessel steadied on an appropriate course, and after taking visual observations of navigation aids astern, the pilot left the bridge and went into the chart room to prepare his bill. This important task occupied almost ten minutes. When he returned to the bridge, he saw Blanket Island to port, rather than well to starboard, as it should have been. He ordered right rudder, correctly, as there was deep water north of the Island, and engines full astern, but it was too late.

The ship's heading after grounding was 255 degrees, a fact of no particular import in view of the order given for right rudder, and because the depth was less on the starboard side, tending to apply more arresting force to that side of the hull, twisting the vessel to the right.

Memorandum Decision of Briant, J.

In the absence of any equipment failure or other explanation, the presence of the vessel under conditions of clear visibility outside the channel indicated on the charts she carried, is in itself some evidence of negligent navigation. The entire record here compels a finding of negligence by the watch officer in failing to keep the vessel on the course set by the pilot, and failing to seek the advice of the pilot, by asking him to return to the bridge when it became apparent that the relative bearing of Wolfe Island Light was decreasing. Alternatively, it is possible that the pilot set the wrong course initially, although his experience and local knowledge would seem to militate against any such conclusion. Chief Mate Chang testified that the pilot, before leaving the bridge, called for a course of 255 degrees, and the Chief Mate (p. 36 of Exhibit 30) disclaimed any recognition of the purposes of any of the lights he observed. Chief Mate Chang's license and experience warrant a conclusion that even if the pilot did set a course of 255 degrees, the Mate should have realized the vessel was heading into shoal water and leaving the shipping channel shown on the charts.

No unseaworthiness is found with respect to trim, or absence of a bow lookout. The weather was clear and visibility good. Although the Trader was down by the stern, and the helmsman could not see over the bow so as to observe Blanket Island, the watch officer could and should have walked to the wings of the bridge to look, and there was sufficient visibility astern and to the side to permit taking a fix. There were sufficient crew members available so that the watch officer could have assigned a bow lookout. Such a lookout, lacking charts, local knowledge and access to the pilot, would have been of no use under these circumstances, or, to express it differently, would not have observed anything which could not have

been determined on the bridge. Nor was the trim unseaworthy for vessels of this type. The pilot testified and I find that he navigated the Seaway, including two locks, without difficulty arising from the trim, any claimed language barrier or equipment or other cause. An official inspection at entry of the Seaway found the Trader seaworthy and fit to transit the system.[1] A short explanation for the grounding is that somebody steered the vessel onto a known shoal, appearing on charts which were aboard, and directly within the pilot's local knowledge. Indeed, a more classic case of "Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation . . . of the ship" is difficult to postulate.

Deviation

Was the Trader at Blanket Island as a result of an unreasonable deviation which breached the contract of

[1] The Seaway Handbook contains Rule 5 of the Joint Regulation of the St. Lawrence Seaway Authority Respecting the Transit of Vessels on the St. Lawrence Seaway. It provides in part:

"5(1) No vessel shall transit unless

(a) it is properly trimmed and in a condition determined by the Authority or an officer to be safe and satisfactory to it or him; and

(b) it is equipped with such apparatus, equipment or machinery as the Authority deems necessary for safe transit."

The Trader was inspected on October 13, 1971 at Montreal, at a time when her draft was 7 feet forward and 21 feet aft. Subject to compliance with minor modifications, none of which affected her safe navigation, she was found in satisfactory condition to transit the Seaway.

The Trader had been surveyed by the American Bureau of Shipping at Taipei, Taiwan on July 20, 1971 and retained in class. That Bureau surveyed the vessel again at Brooklyn, New York on September 29, 1971, and the surveyor recommended that she be retained in class. No unseaworthy conditions were found in either inspection.

carriage? At the time of issuance of the Bills of Lading, some 472 in number in early August 1971, plaintiffs knew that a strike of longshoremen in New York was likely. The Bills of Lading contained the usual "liberties clause," found in §5 on the reverse of the Bill in the usual fine print. This clause, well known in various forms to ocean commerce, permits the carrier, in uncontrolled discretion, if discharge is impeded or there are reasonable grounds to anticipate the same, by imminence of strikes or other disturbances, to tranship and forward cargo "at any port or ports place or places." *Cf. Hirsch Lumber Co.* v. *Weyerhaeuser Steamship Co.*, 233 F.2d 791, 795 (2d Cir. 1956). Under the circumstances of this case, discharge at Detroit, Michigan probably would have constituted compliance with an alternate mode of performance reasonably authorized in the contract.

The owner, however, instead of relying on the liberties clause, made up its own special strike clause, which the carrier stamped prominently on the face of each Bill of Lading in a block rubber stamp. This stamp was explicit, and not permissive. It constituted an essential element of the contract of adhesion which the Bill of Lading forms. It limits the printed liberties clause in ~~85~~ §5 of the Bill. It read as follows:

"ALL USA CARGO WILL BE DISCHARGED AT THE NEAREST NON-U.S. PORT(S) IN EVENT OF THE LONGSHOREMEN STRIKE AT THE U.S. EAST COAST CONTINUES AND CARGO [sic, should be "cost of carriage"] FROM SUCH DISCHARGING PORT(S) TO BILL OF LADING DESTINATIONS ARE AT THE COST AND RISK OF CARGO."

The Court concludes that this strike clause, placed thereon by the carrier, represents an agreement or contractual obligation to discharge cargo, at carrier's cost, at the *nearest feasible non-U.S. port.* Detroit, Michigan is not such a port.

Prior to the voyage, plaintiff appointed a local port agent at New York, Gannet Freighting, Inc. A flurry of cables ensued between the owner and its local agent. As early as August 11, 1971, Gannet advised the owner of impending congestion in New York after the latter part of September 1971 on account of a pending strike of the International Longshoremen's Association (hereinafter "ILA"). On August 17th Gannet advised the owner: "We v much afraid that vsl will fall back further and that reaching NY in last days September will be unable complete disch in time before strike (if strike comes)."

Beginning about August 18th, the owner began a series of steady cable complaints to its port agent in New York. For example, August 18, 1971:

> "We feel that the stevedorage in New York is extremely expensive so please think some way to reduce it. If the port really starts a strik[illegible]e will surely consider to discharge elsewhere as all bills of lading have been claused with a strike clause that in the event of strike all cargoes will be discharged at nearest non-U.S. port and cost for forwarding to NY will be for account of cargo receivers-consignees."

Finally, as of August 20th, the port agent secured a bid from Pittston for approximately $18.00 per measurement ton, plus wharfage, and other customary extra charges. the Trader departed Hong Kong at 1819 hours on August

22nd. On September 8, 1971 her New York port agent advised, not unreasonably:

> "Our opinion ILA strike will not happen. We think that if union cannot agree work by extending present contract after expiration 30 Sept. Govt will invoke Taft-Hartley Act which provides so-called 'cooling off' period of 80 days. In other words there may be stoppage of work for few days while Govt processes necessary court orders but then would resume until late December anyway. Final outcome unpredictable this time, subj Govt policy further extension price-wage controls. Most opinion that Govt will extend freeze beyond November 13th."

The Trader arrived New York on September 27, 1971 and commenced to discharge cargo the following day. On September 30, 1971, the longshoremen's strike began. On October 6th Gannet advised owner that President Nixon had invoked the Taft-Hartley Act injunction only against west coast ports, and,

> ". . . we fear this action will mean indefinitely prolonged stoppage at New York. While always possible they might settle, our best judgment in light of present facts, is that they will not. Consequently we have looked for best alternate port and have got a firm commitment from Detroit Harbor Terminal, Detroit, Michigan. We recommend you accept and assure you that we would take this step if vessel was our own. Also give same recommendation to any other of our principal in same situation. Insofar as Canadian ports are concerned our agents have advised again that any suitable port such as St. John, Halifax, Montreal will

not accept the vessel a/c union problems. Other smaller Canadian ports who don't have union problems are hopelessly inadequate in warehouse space, transit facilities, etc. Great Lakes ports, Cleveland, Detroit, etc. do not have ILA labor and Detroit can accept vessel other ports are overcrowded and refused. There will be a saving to you on stevedoring about $5.00 per MSMT ton. Detroit stevedore quoting $12.95 all purposes against New York rate $18.00. We are still trying accurately estimate how much discharge at New York but our guess at least 8,000 tons if not more remaining. This saving of about $40,000 will be offset by cost of seaway tolls, fittings, etc., which we estimate about $11,000. *We believe net result will be to your benefit financially.*" (Emphasis added)

On the following day, October 7th, the owner agreed to discharge the balance of cargo at Detroit, and on October 8, 1971 the Trader left New York for Detroit. In so acting, as appears from the cablegram, the owner was not relying on any likelihood that the consignees would waive. The owner's instruction was "please try to notify consignees for change of discharge port."

The Trader sailed for Montreal-Detroit on Friday, October 8th at 1130 hours. By its telex of October 11, 1971, owner clearly relied on the stamped clause, by asserting a claim for additional expenses from consignees, including the following:

"Canal tolls and expenses for calling Great Lakes ports;
Bunker fuel oil consumed for extra mileage between New York and Detroit;
Crew wages and insurance premium;
Agents' fees at Detroit;
Other associated expenses."

In addition to its motivation to avoid higher stevedoring costs at New York, the cable of October 11th makes clear that the owner was working a cargo of newsprint, woodpulp and general merchandise for the Far East from "St. John and other Canadian ports." The exchange of cables also shows that shipping from the Port of New York was slow. A large number of vessels had piled up in that port during the strike and were looking for outbound cargo at the end of the strike.

The local port agent in New York for the Trader prepared a notice which was mailed to the "notify parties" named on the orignal Bills of Lading for New York. On the basis of this notice, plaintiff claims a waiver by silence or inaction of any claim of deviation. This document, Exhibit 14, states therein "the vessel sailed from New York 0800 October 8 and is expected to arrive Detroit on October 16th." While there is some dispute, I find that the notice was not mailed until after the vessel had departed (at 1130 hours on October 8th, and not 0800 hours as stated in the notice). The notices were not directed to the real parties in interest, but to their agents appointed for limited purposes, such as clearing customs and picking up at the pier, those firms and persons named on the bills of lading as "notify parties." At least some of the bills of lading appear to have been in negotiable form.

There is nothing conditional about the notice therein contained: it is stating an accomplished fact. The addressees were not told "if you don't protest the vessel is going to Detroit." In no event was the notice received earlier than Monday, October 11, 1971, at which time the vessel was at sea.

Waiver is a voluntary relinquishment of a known right. Even if the notice had been directed to the presons having

the right to assert a claim of breach of the contract of carriage contained in the bill of lading, there is nothing thereon which would indicate that the addressee was being asked to waive any rights under his contract, rather he was being told what the vessel had already done. It is highly unreasonable to expect that the limited agents receiving such notice under all the relevant circumstances of this case would understand that they were required to communicate with Gannet or the owner to assert their principals' contract right to have the vessel discharged at a "non-U.S. port" in Canada instead of Detroit. That none did so may not be asserted successfully as a waiver. The duty to make prompt outcry does not extend so far.

The Court recognizes that discharge at Detroit fulfilled the ordinary condition of a bill of lading "liberties clause" in that it was indeed among the best available safe and convenient ports. Undoubtedly, if the vessel had arrived on time and discharged without incident, most consignees would have accepted their goods. But this did not happen, and it is no objection to the position of cargo claimants in this case, that they are motivated by retrospective vision and the infelicitous fact of the stranding in asserting their rights to object to the deviation as unreasonable.

Was the Deviation Unreasonable?

As we have noted previously, the purpose and meaning of the stamped clause was not to add to the discretions and power of the Master under the liberties clause (§5 of the Bill of Lading), but rather to state an essential element of the contract of carriage of seasonal goods. All parties knew that the goods were wanted for the Christmas market, and that the purpose of the contract of carriage would be frustrated if the cargo became strikebound.

Accordingly, the stamped clause provides that the cargo "will be discharged at the nearest non-U.S. port(s)." These are words of performance and agreement. The clause does not say that the cargo "may in the discretion and judgment of the Master be discharged in a non-U.S. port, or any port permissible for discharge within the meaning of clause 5 of the Bill of Lading." It could have said so, and perhaps it should have, but we may not rewrite the contract of the parties.

Cargo claimants showed that longshoremen in certain Canadian ports, particularly Halifax and Montreal, members of the ILA, required to abjure "hot cargo" or "runaway ships" as the same are defined in the history and tradition of the labor movement, had evolved a means for making the money offered by business diverted from New York, and at the same time maintaining the myth of union solidarity. This they did by condoning, or failing to discover forgery of manifest and cargo plans so as to substitute the name of their Canadian port for that of the strikebound American port. A union delegate after examining the manifest could approve discharge even though every case was stenciled with the name of the port of New York. His men could earn their wages without appearing to violate their union rules. Apparently many vessels were diverted from New York and discharged in Canadian ports during the period, but we do not consider Trader committed an unreasonable deviation or breached her contract by failing to enter such ports. No matter how commonly done, and no matter how readily acquiesced in by the Canadian union leaders, the practices of forging ship's documents to evidence a compliance with union rules is an ignoble one and this contract should not be deemed to require such conduct. Accordingly, the Court agrees that

such ports, all nearer New York than Detroit, were not ports at which the Trader should have discharged in compliance with the contract of carriage. There, in the absence of fraudulent documents concealing the fact that a ship was a runaway, the ILA affiliated locals would not discharge the vessel.

There is some evidence that the boycott of ships diverted from a strikebound East Coast U. S. port was not in effect in Quebec City. Quebec City is organized by the International Longshoremen's Association, but the local union there had taken a position of independence. On balance it appears the Trader could have discharged in Quebec City, but there were risks inherent in the situation. Port agents who deal regularly with such circumstances were reluctant to believe that the local union in Quebec City would adhere to its policy of independence as the strike lengthened and there was a risk that the International might apply coercion to the Quebec City local after discharge of a runaway vessel had been commenced, but before it was completed. In such event, Trader would find herself strikebound again.

The Port of Valleyfield presents a different circumstance. That port was congested and its facilities were less efficient than Detroit. If we were construing the actions of the Trader against the background of clause 5 of the Bill of Lading, we would consider Valleyfield no more appropriate than Detroit. However, feasible commercial performance of the contractual agreement to discharge at the nearest non-U.S. port could have been effected at Valleyfield.

Plaintiffs' position mistakes the issue. In its post-trial reply memorandum, plaintiffs state:

> "While Canada probably has many ports, it has been established that few of them were suitable for the

> Singapore Trader's cargo. Plaintiffs' representatives investigated the ports they considered suitable, including the major ports and some minor ports. It would be unreasonable to require that plaintiffs investigate and give evidence on every minor port in Canada. The minor ports in the United Kingdom were given no consideration in *The Caspiana* [*G. H. Renton & Co., Ltd.* v. *Palmyra Trading Corp.*, (1956) 2 Lloyds 379]."

The Caspiana, supra, involved the typical liberties clause, and under such a circumstance we would agree that discharge at Detroit would have been reasonable performance. Here, however, the parties had specifically contracted for discharge at "non-U.S. port(s)," and to pass any such port if it were safe and suitable and could be entered without committing forgery, represented a deviation. As the duty to discharge at the nearest non-U.S. port or ports was an essential element of the the contract of carriage, it is no defense that Gannet made good faith efforts, as it did, to ascertain conditions in Canada, or that it acted reasonably in reporting to its principal, nor indeed that the owner relied on Gannet in instructing the Master to proceed to Detroit. The failure of the vessel to perform in this case is directly due to the act of the owner. See *The Isis* [*May* v. *Hamburg-Amerikanische Packetfahrt Schiffgesellschaft,* 290 U.S. 326 (1933)].

We turn next to the question of whether the deviation was unreasonable.

Prior to the enactment of COGSA and similar rules based on the same international convention, including the Hong Kong Carriage of Goods by Sea Ordinance, it was generally considered that *any* deviation constituted such a substantial breach of the contract of carriage as to void any limita-

tions of liability imposed thereby. The statutes injected a new concept on the issue of deviation, the question of reasonableness, and did not define reasonableness. The original theoretical basis for sustaining a claim of deviation was that "but for" the deviation, the resultant loss or damage to cargo would not have occurred, and therefore the deviation was an operative cause of the loss, even though the proximate cause was negligent navigation or the tortious conduct of others. In the instant case the vessel would not have had occasion to pass Blanket Island if she had discharged at Valleyfield or Quebec City or any of a number of minor Canadian ports at which she could have complied with her contract.

The risk of carriage for the additional distance to Detroit was substantial. While many tons of shipping travel the St. Lawrence Seaway with minimum loss of life and property, the fact remains that the voyage is lengthy and difficult inland passage through narrow channels possessing many obstructions and special risks. It requires the local knowledge of a compulsory pilot and did subject this vessel and her cargo to additional perils which increased proportionately with the distance traversed. These perils in the instant case were beyond those contracted for in the contract of carriage contained in the Bill of Lading.

Cargo claimants assert that the Trader, because of the stamp on the Bill of Lading previously mentioned, was "a ship destined for a Canadian port," and accordingly could have discharged at any Canadian port, including those actually controlled by ILA locals in sympathy with the East Coast U.S. strike. There is some evidence to support this conclusion. However, the difficulty with the point is that the vessel had already been in New York when the strike began there, and had left that strikebound port

partially discharged. We may accept for argument's sake the suggestion that if the vessel had been diverted on the high seas, before entering the Port of New York, to a unionised Canadian port, she might have discharged there because of having an alternative destination expressed in the strike clause. Still once having been strikebound in the Port of New York for more than seven days, the ship must be regarded as a "runaway vessel." Were that fact known to the local union officials, the Court finds that she could not have discharged at Montreal or Halifax even if the argument previously set forth be accepted as valid.

The evidence is clear as to Valleyfield. This port lies a few miles west of Montreal, which in turn is 535 miles by water from Detroit. It had adequate facilities and did not employ longshoremen who were members of ILA. There is some evidence that another strikebound ship, the Dagrun, was discharged at Valleyfield.

For the reason noted, the Court declines to find that the Trader could have discharged at Montreal. While a knowledgeable union official testified that he would have approved discharge of the vessel based on the Bills of Lading, it is not clear that he would do so knowing that the ship was also a runaway vessel which had actually been strikebound in the Port of New York, contrasted with one which had been diverted at sea while en route to New York.

Unfortunately, when the Trader stopped in Montreal to be inspected and fitted for the Seaway, she had already booked a berth in Detroit, and made a contract with a Detroit stevedore. Accordingly, the Master made no effort to ascertain whether, based on a full disclosure of the facts, Montreal longshoremen would have discharged the vessel. There was sufficient capacity in the Port of Montreal

to have done so if the labor technicalities could have been obviated.

As to Halifax, there is some dispute in the testimony. Although Halifax is nominally an ILA port, apparently the local union had not turned away any vessels. But for the reasons mentioned we do not think that the Master may be required to make alterations, changes or "corrections" in the stowage plan or any other ship's documents. It is unnecessary to dwell on any of these issues, however, since the vessel clearly could have been discharged at Valleyfield, which must be passed en route to Detroit.

Under the circumstances, failure to discharge at Valleyfield, as the nearest non-U.S. port was an unjustified breach of the contract of carriage and an unreasonable deviation, rendering the vessel and her owner liable for the accident which occurred after having passed that port.

Conclusion

Plaintiffs' petition for exoneration or limitation of liability is denied because of the unreasonable deviation hereinbefore found, which occurred at the direction of the owner. Those cargo claimants damaged as a result of the stranding shall have judgment in amounts to be determined at a separate trial to be held at a date to be scheduled following appellate finality of the interlocutory judgment to be entered hereon, which is appealable pursuant to 28 U.S.C. §1292(a)(3).

The foregoing, together with the "Agreed Facts" and certain requested specific Findings of Fact submitted, which the Court has signed simultaneously herewith, shall constitute the Findings and Conclusions in this case pursuant to Rule 52, F.R.Civ.P.

Memorandum Decision of Brieant, J.

Settle an interlocutory judgment on five (5) days notice.

Dated: New York, New York
March 26, 1975

/s/ CHARLES L. BRIEANT, JR.
CHARLES L. BRIEANT, JR.
U.S.D.J.

ME. ATTY'S NO 10-598

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MEMO. ENDORSED

U.S. DISTRICT COURT FILED MAY 21 1975 S. D. OF N.Y.

In the Matter

of the

Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER, and China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability,

Plaintiffs and Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP., and MURPHY PACIFIC MARINE SALVAGE CORPORATION,

Third-Party Defendants.

INDEX NO. 72 Civ. 1275 CLB

INTERLOCUTORY JUDGMENT

WPH ✓ LJB ✓ DWM

This action, having come on for trial before the Court, the Honorable Charles L. Brieant, Jr., District Court Judge, presiding, and the issues of Plaintiffs' petition for exoneration, or alternatively, limitation of liability, pursuant to Title 46 U.S.C. §183, and counterclaim for General Average payments of cargo claimants having been duly tried and a decision having been duly rendered, it is

ORDERED AND ADJUDGED that Plaintiffs' petition for exoneration or limitation of liability and Plaintiffs' counterclaim for General Average payments from cargo claimants are denied on account of the unreasonable deviation which occurred at the direction of the shipowner's president and cargo claimants damaged as a result of the stranding described in Plaintiffs' petition shall have judgment and shall recover of Plaintiffs their respective damages in amounts to be determined at a separate trial, ~~with interest at 6% from~~

CLB/USDS

77887-A

No. 31-7624700 Qualified in New York County Commission Expires March 30, 1977

10/15/71 to the date of entry of final judgment and costs, and, it is further

CLB USDJ

ORDERED AND ADJUDGED that the aforesaid separate trial to ascertain and compute the amount of said damages due cargo daimants of plaintiffs shall be held at a date to be scheduled following appellate finality of this interlocutory judgment, and it is further.

ORDERED that the two (2) third-party complaints and the fourth-party complaint, which have been severed shall be heard at the same time as the hearing on damages, or otherwise as the Court may hereafter direct.

order USDJ

Charles L. Brieant Jr
CHARLES L. BRIEANT, JR.
U.S.D.J.

Dated: New York, New York
May 21, 1975.

JUDGMENT ENTERED - 5/21/75
Raymond F. Burghardt
CLERK

No. 31-2624700
Qualified in New York County
Commission Expires March 30 1977

5/20/75
— Direct.

MEMO ENDORSED

Brieant J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

In the Matter

of the

Complaint of Singapore Navigation Company, S. A., as owner of the Steamship SINGAPORE TRADER, and China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability,

Plaintiffs and Third-Party Plaintiffs,

-against-

PITTSTON STEVEDORING CORP., and MURPHY PACIFIC MARINE SALVAGE COMPANY,

Third-Party Defendants.

----------X

INDEX NO.
72 Civ. 1275 CLB

NOTICE OF SETTLEMENT

SIRS:

PLEASE TAKE NOTICE that an order, of which the within is a true copy, will be presented for signature to the Honorable Charles L. Brieant, Jr., United States District Court Judge, Southern District of New York, at Foley Square, New York, New York, on the ~~12th~~ 20th day of May, 1975, at 10:00 a.m.

Dated: New York, New York
May 12th, 1975.

Yours, etc.,

DONOVAN, DONOVAN, MALOOF & WALSH
By:

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No. 31-2074, [illegible]
Qualified in New York County
Commission Expires March 30, 1977

INDEX NO. 74 Civ. 1275 CLB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter
of the
Complaint of Singapore Navigation, S.A., as owner of the Steamship SINGAPORE TRADER, and China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability,
Plaintiff & 3rd Party Plaintiffs;
-against-
PITTSTON STEVEDORING CORP., and MURPHY PACIFIC MARINE SALVAGE COMPANY, 3rd Party Defendants.

NOTICE OF SETTLEMENT
-and-
INTERLOCUTORY JUDGMENT

DONOVAN, DONOVAN, MALOOF & WALSH

Attorneys for Certain Cargo Claimants

161 William Street
Borough of Manhattan
City of New York, N. Y. 10038
Tel. No.: 964-3553

DISTRICT COURT
FILED
MAY 21 1975
S. D. OF N. Y.

MAY 21 1975

whether cargo claimants are entitled to interest and if so, for what period and in what amount are issues regarded by the Court as a part of damages, and reserved for future determination. Striking out the reference thereto on the within interlocutory judgment is not regarded as a determination thereof on the merits.

Charles L. Brieant Jr
U.S.D.J.

130a

Please take notice that the within is a true copy
of which
was duly entered herein in the office of the clerk
of the within named County and of this
Court on
the day of 19
Yours, etc.,
DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for
161 William Street
Borough of Manhattan, City of New York, N. Y. 10038

Please take notice that an order of which the
within is a true copy will be presented for settlement
and signature herein to Hon.
one of the judges of this
Court at
the County of State of New York,
on the day of 19 ,
at 10:30 o'clock in the forenoon, or as soon thereafter
as Counsel can be heard.
Dated:
Yours, etc.
DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for
161 William Street
Borough of Manhattan, City of New York, N. Y. 10038

True Copy.

NO. ATTY'S NO.
10-898

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of Singapore Navigation Company, S.A., as owner of the Steamship SINGAPORE TRADER, and China Marine Investment Co., Ltd., and China Overseas Navigation Co., Ltd., Plaintiffs, for exoneration from or limitation of liability,	:	NOTICE OF APPEAL 72 Civ. 1275 (CLB)
Plaintiffs and Third-Party Plaintiffs,	:	
-against-	:	
PITTSTON STEVEDORING CORP., and MURPHY PACIFIC MARINE SALVAGE COMPANY,	:	
Third-Party Defendants.	:	

Notice is hereby given that the plaintiffs and third-party plaintiffs appeal to the United States Court of Appeals for the Second Circuit from the interlocutory judgment entered and filed on May 21, 1975, which, among other things, denied the plaintiffs' demand for exoneration from or limitation of liability, as well as their counterclaim described therein, and that the plaintiffs appeal from each and every part of said interlocutory judgment as well as from the whole thereof.

Dated: New York, N. Y.
June 20, 1975

KIRLIN, CAMPBELL & KEATING

By Lawrence J. Bowles

Attorneys for Plaintiffs and
Third-Party Plaintiffs
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New York, N. Y. 10005

77889-A

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RECEIPT FOR PAYMENT

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

OFFICE OF THE CLERK — NEW YORK CITY

RECEIVED FROM Kirlin, C. DATE 6-20-75

Docket No.	(Pl.)	(Def.)
Jr Civ 1275	Copley Lingerie Inc.	Kilton
CHB		Stinerking

ACCOUNT	AMOUNT		ACCOUNT		AMOUNT	
Clerks Fees Appeal	5		Registry Cash Bail / Tender	ACCT. NO. 1		
Bankruptcy Filing Fee						
Referee's Sal. and Exp. Fund			Seaman's Wages	ACCT. NO. 2		
			Unpaid Dividends In Bankruptcy	ACCT. NO. 3		
Miscel. Earnings Copy						
Certificate			Other Moneys			
Search			Costs			
			Fine			
Nat'zn Fees Pet. Nos.						
Decl. Nos.				Total ▶	5	

DEPUTY CLERK J. Schmidt

Cash ☒ Check ☐ MONEY ORDER ☐

☆ U.S. GPO : 1974 547-556

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want to be sure I call all the proper officers.

MR. BOWLES: We'll be happy to provide that.

MR. MALOOF: Would you do that today?

MR. MALOOF: I think the court clerk has a list here.

THE COURT: Don't count on that list, because attorneys move, change the firm names, and papers get misfiled. It is much better to deal with the petitioner on the names.

MR. BOWLES: We'll do what we can.

THE COURT: All right. Let's proceed with the trial.

MR. BOWLES: Mr. Herlihy.

R I C H A R D D. H E R L I H Y , called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOWLES:

Q Where do you live, Mr. Herlihy?

A 158 Harrison Place, Staten Island, New York.

Q By whom are you presently employed?

A Gannet Freighting, Inc.

Q What is your position there now?

A Operations manager.

Q Were you so employed in August, September, October 1971?

A Yes, sir.

Q How long had you been with Gannet Freighting, Inc. at that time?

A Three years.

Q When did you go with Gannet Freighting, Inc.?

A August '68.

Q How old are you, sir?

A Now?

Q Yes.

A 44.

Q What is the business of Gannet Freighting, Inc?

A Steamship chartering brokers and agents.

Q How long have you been in the steamship business?

A 28 years.

Q Would you very briefly outline your experience prior to going with Gannet Freighting, Inc.?

A I joined the Cunard Line in 1946, left it to do three years in the Navy, rejoined Cunard for a year, sailed as an AB seaman for four years, joined Isbrandtsen

Freight department briefly for two years and then Texas Transport and Terminal, general agents in New York for 11 years immediately prior to joining Gannet.

Q When did you first become aware of the Singapore Trader and her projected voyage to New York?

A In about July 1971. We were contacted by a friend of the president of my corporation, who advised us that he had a client in connection with his tanker chartering business and this client had acquired a dry cargo vessel that he intended to berth on the Hong Kong-New York trade and his client had acquired if he would be the a-ent in New York. And he replied that being a tanker broker essentially he did not have the staff or experience but would recommend another firm, and he recommended my firm.

We discussed terms that we would handle the ship and reached an agreement eventually on being agent for the vessel, which was the Singapore Trader.

Q What precisely were your activities as agent for the Singapore Trader to encompass?

THE COURT: When did he become agent?

Q When did you become agent?

A We were appointed August 11 by Telex from the owner.

Q Is that 1971?

A Yes, sir.

Q What were your duties for the Singapore Trader to include?

A We were port agents for her and as such we were responsible for arranging her berth to discharge, to negotiate the stevedoring contracts, to arrange customs entry, to look after the crew in any respect that they might require, to pay vendors' bills properly vouchered, to maintain an accounting of the freight, and to render a final voyage account when it was completed.

Q At some point in time did you receive any requests from the owner to obtain any information on outward cargo from the United States after the Singapore Trader arrived?

MR. HAYDEN: Objection.

Q I'm sorry. To be carried outward after the Singapore Trader arrived?

MR. HAYDEN: Objection to the form of the question.

THE COURT: The objection is to form. It is not quite clear to me what the form objection is.

MR. HAYDEN: He is leading the witness.

MR. BOWLES: Withdrawn.

Q Mr. Herlihy, did you have a series of Telex exchanges with Hong Kong concerning the Singapore Trader during the time that you were acting as its agent?

A Yes, sir.

MR. BOWLES: Would you mark a file of Telexes as the next exhibit 13 and then A, B, C and so on.

(Plaintiffs' Exhibit 13 was marked for identification)

MR. BOWLES: Mr. Maloof, there is the file of Telexes marked at Mr. Herlihy's deposition. I have put them in date order from the beginning on August 11, 1971. I have removed several Telexes that were duplications so that there is only one copy of each Telex, but I believe you will find it all in this group.

MR. MALOOF: Are you going to offer all of them, Mr. Bowles?

MR. BOWLES: I intend to, yes.

MR. MALOOF: May I ask you to identify them by date? I don't ask that for a light reason, but I want to be sure that it covers Telexes that I may wantto put in. There may be some that you will not put in.

MR. BOWLES: I am putting in all the Telexes.

MR. MALOOF: All that Gannet Freighting had with the shipowner at any time?

THE COURT: If everyone knows, and it is not an issue, the Court doesn't know.

MR. BOWLES: Colley Motorships is a company in Montreal who perform agency services and I consider them as a sub-agent to some extent for Gannet Freighting, Inc.

Q Is that correct?

A Yes, sir.

THE COURT: Is this the only vessel for this owner which your company acts for?

THE WITNESS: Yes, sir, that is the only one we ever handle for.

MR. MALOOF: What was the answer to that?

THE WITNESS: I said yes, that the Singapore Trader was the only vessel Gannet Freighting ever handled for China Marine Investment Co.

Q Mr. Herlihy, I show you a document marked Plaintiffs' Exhibit 13 in evidence, with the Telexes individually marked A, B, C, etc. Is this your complete file of Telexes with the owners of the Singapore Trader in Hong Kong, with the exception of one or two other Telexes.

THE COURT: That is not a very meaningful question.

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MR. HAYDEN: I thought you had just previously represented this file to include all Telexes during that period. Now you have just indicated to this Court, I believe, that it is all Telexes except for a [illegible]le.

MR. BOWLES: I'm sorry. I said to the owner except for the others mentioned, meaning the Colley Motorship, and I think there is one or two from the ship itself rather than to the owner.

THE COURT: Well, reframe the question and ask him whether Exhibit 13 includes all Telex exchanges with the owner during the period from August 11 to October 14, 1971,inclusive.

Does it?

MR. BOWLES: I adopt your question, your Honor.

THE COURT: All right. Does it?

THE WITNESS: Yes, to the best of my recollection, the best that I could produce on checking my records in the office at the time.

Q Did you go forward and negotiate a stevedore contract for the shipowner for the Singapore Trader here in New York?

A Yes, sir, I did.

Q With what company?

A Pittston Stevedoring.

Q And where was the ship to berth?

A The contract was fixed without an assigned berth. It ultimately was assigned to Columbia Street dock in Brooklyn.

Q Prior to the commencement of the strike at midnight on September 30, 1971 and before the arrival of the Singapore Trader in New York, did you make any efforts to obtain any outbound cargo for the Singapore Trader?

MR. HAYDEN: Objection.

Q Assuming that she would discharge her cargo in New York.

THE COURT: The form of the question calls for an assumption. I think you will have to reframe your question.

What, if anything, had he done with respect to outbound cargo and on what dates?

Q Mr. Herlihy, what, if anything, did you do with respect to obtaining any outbound cargo at any time for the Singapore Trader?

A Personally, nothing. But my company, as I mentioned, is a chartering broker. Therefore the

brokres in the company covered the market as best they wer able to determine if there was any available cargo from the USA direction Far East, which was what the owner requested, that we try to find some outbound cargo for him direction Far East, and they were unsuccessful.

Q Did you so inform the owner?

A Yes, sir.

Q Can you tell us whether or not any informatio in that subject is included in the Telexes in front of you?

A I believe there is a reference where we told him the market generally was dull and also the age of the vessel was making it difficult.

Q Prior to the commencement of the strike had any cargo then been arranged? I am sorry. I believe your answer is no to that question, you mentioned?

A No.

Q Can you tell us whether or not you received information as to when the ship was expected to arrive in New York?

A Yes. We had several communications from the owners in response to our direct questions. They gave us an ETA originally 16 September. They revised that in a message that referred to a typhoon delaying the

loading.

Subsequently we were advised the ship's ETA at Panama and then a routine radio message from the captain giving us his ETA New York for purposes of arranging pilotage, quarantine, etc.

Q You mentioned the term ETA several times. What exactly does that mean?

A I'm sorry. Estimated time of arrival.

Q At any time prior to the ship's arrival, can you tell us whether or not you received any guarantee of when the ship would arrive from the shipowner?

A No, there is no such thing as a guaranteed arrival time.

Q Why is that?

A Because nobody can guarantee it. The weather can affect it.

Q In other words, many factors can affect the arrival of the ship?

A Right. The phrase is invariably estimated time of arrival, even to the point where you get, say, a 12-hour notice, it will still say estimated time of arrival.

Q Prior to the commencement of the strike can you tell us whether or not you had any communications

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with the shipowner in Hong Kong concerning strike possibilities at New York?

A Yes, sir. We were aware --

THE COURT: He is asking you what you told the owner, not what you were aware of. What did you communicate to the owner, if anything?

A That he should try to get the vessel to New York as early as possible since the ILA contract expired September and there would be port congestion in the latter part of September.

Subsequently we advised him we did not think there would be a strike and again, when our appreciation of the situation changed, that we felt there would be.

Q Why at one point did you tell the owner there might not be a strike?

A That was the best opinion we got from the stevedores.

Q On what information was that based?

A On their evaluation of their status of their negotiations with the union and their expected effect of the government's wage and price policy.

Q When did the Singapore Trader arrive in New York?

A The 26th or 27th. I would have to look at

it here.

Q You may check the files.

THE COURT: It was stipulated it arrived on the 27th.

MR. BOWLES: The 27th.

Q Did she at some time commence discharging any cargo?

A Yes. The vessel berthed on the 27th and we ordered gangs for the 28th. My recollection is some cargo came out of the ship on the 28th, some on the 29th, some on the 30th.

Q How many gangs had you ordered for the ship?

A Five.

Q Did you get five gangs?

A Never.

Q How many did you have on the 28th, do you know?

A One.

Q How many on the 29th?

A One all day and a second gang, I believe, part of the time.

Q Did you get any gangs on the 30th?

A Yes. The maximum we ever had was two gangs, to the best of my recollection, two gangs at the

most.

Q Approximately how much of the cargo was discharged at New York, if you know?

A About 14 to 1800 revenue tons, which is a measurement of 40 cubic feet per ton. This was the basis for the measurement of the cargo.

Q In a percentage basis of her total cargo, how much came out, approximately?

A Between 15 and 20 per cent.

Q How many bills of lading were issued on the cargo carried on the Singapore Trader?

A 470, something, 470, 475, about that many.

Q Did you have some activity with these bills of lading after the cargo arrived?

A Well, in handling the vessel as an agent, when we received in the mail the manifest and non-negotiable copies of the bills of lading, we prepared arriv notices and sent them out to the notify parties listed on the individual bills of lading.

Q When did the strike actually commence?

A October 1st.

Q Immediately prior to the commencement of the strike, and particularly on about the 30th of September, what information, if any, didyou have concerning whether

there would or would not be a strike?

A Well, I was attending the vessel discharge, going down to the pier myself every day. On the evening of September 30 I was advised by the pier superintendent that the union were going to work the following day, that they had agreed to extend the contract.

He accepted my order for labor for October 1st.

When I reached the pier on the morning of October 1st, there were pickets, no work was being performed. I had a conversation with the superintendent as to what happened. He advised me that sometime during the night, September 30, one of the local unions in the port objected to extending the contract and they therefore notified each other by telephone that the agreement was withdrawn. Consequently they struck. They did not perform any work.

Q After the commencement of the strike, can you tell us whether or not you took any action to notify the shipowner in Hong Kong of the actual commencement of the strike?

MR. HAYDEN: Objection to the form of the question. He is leading the witness.

THE COURT: Please don't lead the witness.

Reframe the question.

Q After the commencement of the strike, will you tell us what you did next with respect to the ship, if anything?

A Well, we notified the owner.

Q How did you do that?

A I don't recall whether it was a Telex. It might have been by Telex or it might have been by teleph I don't recall. We apprised him of the situation, that strike had commenced.

We had adopted at that point a wait and see attitude immediately, first October. We had no idea how long the strike would be, particularly in view of their immediately prior to commencement of the strike agreeing to extend. So the situation was a bit cloudy in our minds, will they continue the strike, will they g b k, will they reach a settlement. So we did nothing immediately for the first two days other than to advise the owner that the vessel was strikebound in New York.

During this time we considered what the opti would be to present to the owner -- should he let the ship wait at New York, hoping the strike would have a quick settlement, should he divert the vessel elsewhere, should he frustrate the voyage? All these things

we thought about.

Finally by, I guess, about the 6th of October we felt the strike was going to be prolonged, that he --

Q What led you to that conclusion?

A Discussions with the stevedores, who reported to us the status of the negotiations and the intransigence of the parties negotiating a new contract.

Q What occurred next?

A We then tried to determine what would be the best course, where would be the best place to divert the ship in order for the cargo to be discharged and delivered to the consignees.

Q Did you take any action of any kind on that?

A Yes, sir. We made inquiries from our Canadian agents, Colley Motorships, asked them to check the situation in various Canadian ports and give us an appraisal of how safe, I suppose, or whether or not it would be possible to send the Singapore Trader to a Canadian port.

Q When did you do this with Colley Motorships?

A During the period October 2nd through the 6th.

Q To whom did you speak at Colley Motorships, if you did it personally yourself?

A Yes, sir, various people at various times. We had -- excuse me. Gannet will be using Colley as a Canadian agent for the three years I was employed at that time by Gannet for any business relating to Eastern Canada, Toronto down to the St. Lawrence.

I would speak practically daily to Colley on a variety of matters involving other clients as well as the Singapore Trader. I would speak to Herb Colley --

Q Who is he?

A President. I would speak to Mr. Honegger. would speak to Mr. Paulsen. The questions I would ask these people --

Q What questions did you ask them?

A Quite a number of questions. One essentially the basic purpose of checking with them is what is the situation in Canadian ports regarding taking a vessel that was strikebound at New York.

Q Did they give you an answer?

A Yes, sir.

Q What was the answer?

A The answer they gave was the ILA ports in Canada -- by ILA ports, I should clarify that, that is a port where the labor employed our members of the International Longshoremen's Association.

The advice we received was the ILA ports would not accept a vessel that had been diverted from a strikebound American port, in other words, the Singapore Trader. There were smaller ports in Canada where the labor was not ILA but they could not recommend discharging the type of cargo on the Singapore Trader at these ports, the reason being their facilities were inadequate, the facilities for delivery of the cargo to the consignees were inadequate, the cargo would have been exposed in fall and winter weather.

So we, Gannet, then recommended to the owner that we discharge the vessel at the Port of Detroit, Michigan.

Q Why Detroit?

A Because Detroit is a non-ILA port. It is a general cargo port, it has experienced longshoremen, it has adequate rail and truck facilities, it has adequate custom house facilities, and perhaps most importantly it would take the Singapore Trader.

We approached several other non-ILA ports on the Great Lakes.

Q Which ports are those?

A Cleveland has one non-ILA, Toledo has one, Buffalo. Not Chicago. No. That is ILA.

The other ports were congested, did not have the room on their docks, on their facilities to handle a vessel like the Singapore Trader. The stevedore we finally approached -- pardon me. I want to change that -- successfully approached to take the ship was Detroit H[illegible] Terminal, which is the largest general cargo handling terminal in the Port of Detroit. They were reluctant to accept the vessel since the time period involved was getting near the end of th e Great Lakes navigation season, and they were tied up with their other business.

However, they agreed to handle the Singapore Trader as a favor to Gannet Freighting. We have other business we can give them, and this was the conversation.

Q Mr. Herlihy, you mentioned making a recommendation to the owner concerning going to Detroit. In what form did you make that recommendation; what was your method of communication?

A I sent him a Telex.

Q What is the date of the Telex?

A October 6.

MR. BOWLES: That was previously marked as Claimant's Exhibit 1 for identification. Please mark it.

MR. HAYDEN: We are in the process of identifying all the particular Telexes. Has the clerk now marked all the individual Telexes as requested?

MR. BOWLES: Not yet.

MR. HAYDEN: When they are marked will you please advise us of the number that are there and put them on the record?

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record.

THE CLERK: The Telexes are now marked individually as Plaintiffs' Exhibits 13-A through 13-Z and 13-AB through 13-AC.

MR. BOWLES: I would just like to note for the record that the Telex dated October 6, 1971, is now

Plaintiffs' Exhibit 13-X in evidence.

THE COURT: How many separate bills of lading were on this ship?

THE WITNESS: About 470.

THE COURT: 470 different shippers, different lots or what?

THE WITNESS: No, sir; individual bills of lading and one receiver may have 10, 15 or 30.

THE COURT: How many shippers?

THE WITNESS: I really don't have any idea. I never had any occasion to count or analyze them.

MR. MALOOF: I couldn't hear.

THE WITNESS: I don't know. I never had any occasion to analyze them.

MR. MALOOF: But there were far fewer consignees than there were bills of lading; isn't that true?

THE WITNESS: Yes, Mr. Maloof.

THE COURT: Is that an element which is in issue? Can you tell me how many there were?

MR. BOWLES: I don't know.

MR. MALOOF: It shouldn't be difficult, but I can't say offhand.

THE COURT: All right.

Q Referring back to Colley Motorship, can you

tell us whether or not they are still sub-agents for Gannet Freighting in Canada?

A Yes, sir. At this point they still are and have been continuously.

Q You testified as to dealing with them over a number of years. Have you found their advice or recommendations to be reasonably accurate in a business sense?

MR. HAYDEN: Objection to the form of the question.

MR. MALOOF: Objection.

THE COURT: Sustained as to form. However, I will take proof as to his relationship with them at all times prior to the date of October 8, 1971. He can tell me whether he found them reliable sub-agents at all times prior to that date.

Q In your dealing with Colley Motorship, which you have detailed as being fairly extensive, can you tell us whether or not you found them reliable up to the time of the SingaporeTrader recommendation?

A Yes, sir. When I joined Gannet in 1968 my predecessor introduced me by telephone to Colley Motorship. My firm at that time was representing other clients who had a fairly extensive business shipping into the Great

Lakes. Consequently, we were very often engaged with Colley Motorship since they handled the vessels transiting the St. Lawrence Seeway, Montreal, and made arrangements for fittings, whatever was required. They also did cargo solicitation for us when we asked them. They kept us fully informed of any Canadian government developments that might be of interest to Gannet or its clients.

When we inquired for stevedoring rates on behalf of a client Colley checked the various stevedores and gave us the rates, gave us the evaluations, and we have always had the utmost confidence in them and I still do.

THE COURT: They did no work for you in Detroit

THE WITNESS: No, your Honor.

Q You testified that you sent the Telex on October 6, 1971, to the shipowner in Hong Kong. Can you tell us whether or not there was response to that Telex from the owner?

A Yes, the following day he agreed to accept our recommendations.

Q Was that by Telex also?

A Yes, sir.

Q Was the Singapore Trader actually dispatched to Detroit?

A I'm sorry?

Q Was the Singapore Trader actually dispatched to Detroit?

A Yes. It was cleared from the Port of New York to Detroit.

Q When did she leave?

A About --

THE COURT: This is all in the findings.

A About October 9.

MR. BOWLES: Yes, I believe October 8th.

THE COURT: It is all in the findings.

(Plaintiffs' Exhibit 14 marked for identification.)

Q Mr. Herlihy, I show you a paper marked Plaintiffs' Exhibit 14 for identification. What is this document?

A This is a notice we prepared and sent to the notify parties shown on the bills of lading advising them that due to the strike the vessel would be going to Detroit, Michigan, to discharge her cargo and informing them of who the agent and stevedore at Detroit would be, asking them to follow certain procedures insofar as surrendering the original bills of lading and making freight payment.

Q Who prepared that document?

A I did.

Q Personally?

A Yes, sir.

Q Can you tell us whether or not this was mailed to all of the notify parties and bill of lading parties?

MR. HAYDEN: Objection to the form of the question.

THE COURT: Didn't he already tell us he mailed it to all of them? He said he mailed it to the consignees. I assume he mailed it to all of them.

THE WITNESS: I'm sorry. When I say the consignees, the consignee on a bill of lading could be order of shipper notified.

THE COURT: Who did you send it to?

THE WITNESS: The notify parties, the same people we sent the arrival notice to, except, except those bills of lading we were able to determine had in fact been discharged at New York. If there was any doubt in our mind that the entire bill of lading had not been discharged at New York, we sent this notice.

Q When was that notice sent out?

A The 7th, 8th, 9th. By that I mean I don't recall that we physically had all the envelopes prepared in the one day and they went out in one swoop, but over

the 7th, 8th and 9th -- but the 9th, I think at that time they all had gone out.

THE COURT: I don't quite understand what went on on which dates?

THE WITNESS: It was just preparing the mailing itself, your Honor, hundreds of them.

THE COURT: When were they mailed?

THE WITNESS: Some were mailed the evening of the 7th, some the evening of the 8th and some on the morning of the 9th.

THE COURT: All right.

Q Mr. Herlihy, to your recollection can you tell us whether or not you received any objections from any of the parties sent these documents as to the ship going to Detroit?

A No.

MR. HAYDEN: I object to the form of the question.

THE COURT: Yes, sustained.

You see, you can ask him whether he received any response to the documents, but whether the response constitutes an objection or not calls for a conclusion.

MR. BOWLES: Let me rephrase the question, then.

Q Mr. Herlihy, did you receive any response from the cargo interests in connection with this document?

A I received a phone calls from people who did not clearly understand the instructions on it. They wanted some clarification what this meant. I didn't receive anybody's complaint about the action.

MR. MALOOF: I move to strike.

THE COURT: I will take it for what it is worth. He doesn't know who called him.

THE WITNESS: No, we didn't keep any records.

Q Do you have any writtennotices in your files of letters from any of the cargo interests concerning the ship going to Detroit and particularly making any specific objections about going to Detroit?

A No.

THE COURT: She had gone by the time these people this notice; is that correct?

THE WITNESS: Yes, sir.

Q She was enroute?

A She was enroute, yes, sir.

Q Mr. Herlihy, what was the purpose of the Singapore Trader going to Detroit?

A To discharge the cargo and make it available to the consignees for delivery.

Q Prior to the dispatching of the ship to Detroit, was that ship scheduled to pick up any cargo in Detroit or anywhere in the Great Lakes or Canada area to your knowledge?

A No, not to my knowledge, except there is a Telex where the owner advised us he was working some newsprint at St. John.

Q What is the date of that Telex? Will you check that Telex, please?

A October 11.

Q In your last answer were you referring to this Telex?

THE COURT: Put the number on the record.

A October 11, AA.

MR. BOWLES: Plaintiffs' Exhibit 13-AA, your Honor.

I have no further questions at this time, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. MALOOF:

Q Mr. Herlihy, did the Singapore Trader go past Quebec City to get to the place where she stranded?

A Yes, sir.

Q Have you been to sea?

A Yes, sir.

Q Have you been to sea in that area of the river

A No, sir.

Q Did you know, however, that the Singapore Trader would sail past Quebec City on the way to Detroit when you dispatched her to Detroit?

A Yes, sir.

Q Did you know that she sailed past Halifax?

A If you mean -- yes, yes.

Q Did you know that she would enter Montreal to be fitted for the Seaway?

A Yes, sir.

Q Do you remember being deposed under oath in this case on April 6, 1973?

A I remember giving a deposition. I don't remember the exact date, sir.

Q Do you recall being asked this question under oath during that deposition and giving the following answer

at pages 23 and 24, referring to the notice that you sent to the notify parties:

"Q What date was that sent out?

"A The 9th or 10th of October, 1971."

Did you say that?

A Yes.

Q What date did the ship leave New York to go to Detroit, sir?

MR. BOWLES: It is stipulated, your Honor.

MR. MALOOF: That is all right, I still can ask.

THE COURT: Is it just as to credibility?

MR. MALOOF: I can bring the witness up to another question that way.

THE COURT: All right.

A Went out on the 8th.

Q On the 8th of October?

A Yes.

Q Is Gannet Freighting usually a general agent for shipowners?

A We have a general agency representation with several shipowners, yes, sir.

Q What does a general agent do for shipowners, Mr. Herlihy?

A He acts in their behalf.

MR. BOWLES: Objection, your Honor. There is no evidence here that Gannet was a general agent in this matter.

THE COURT: I thought he was.

THE WITNESS: No, sir.

MR. BOWLES: I'm sorry.

THE COURT: I will sustain the objection in the absence of a showing. I thought he was a general agent for the Trader.

MR. BOWLES: I brought out on direct the specific functions he was performing.

THE COURT: Yes, I understand. His capacity is relevant.

MR. BOWLES: Yes, it is, but he is not a gener agent, I don't believe.

MR. MALOOF: I don't know that I'm bound by th witness's answer that he is a port agent. May I inquire

THE COURT: Yes, you may inquire.

Q What did Gannet do as a general agent?

THE COURT: This is for other vessels?

MR. MALOOF: When he admits they were general agents.

THE COURT: Did the Trader have a general

agent?

THE WITNESS: Not to my knowledge.

THE COURT: She had none?

THE WITNESS: No, sir.

THE COURT: Answer counsel's question.

A I'm sorry, Mr. Maloof.

Q What did Gannet Freighting do on occasions when you say Gannet Freighting was the general agent for shipowners?

A We entered contracts on their behalf such as with towing companies. We arrange berths. We do cargo solicitation. We do cargo studies. We attend to governmental requirements. We book outward cargoes for them. We charter vessels for them. We arrange cargo chartering. We defend claims. We engage counsel. We act in all possible respects in the United States as the owner's "legal representative" under a general agency agreement.

Q When you accepted this agency from Mr. Lin, didn't you make a certain stipulation about one thing?

A Made several stipulations, Mr. Maloof.

Q What were they?

A One of which was that we would agree to handle the vessel at New York on condition we had no responsibility in connection with cargo claims.

Q What other stipulation did you make?

A That we would be placed in funds in advance.

Q Anything else?

A No, nothing that comes to mind.

Q So the only stipulation that concerns your duties was the one about handling cargo claims?

A Yes.

Q Aside from that you were going to do everythi else for Mr. Lin, weren't you?

A No, sir.

Q Weren't you arranging for outward cargo?

A We solicited for him, yes, sir.

Q Didn't you arrange the towing when the ship came in?

A Right.

Q Didn't you arrange for stevedoring?

A Right.

Q What didn't you do besides handling cargo claims that someone else did?

A We did nothing concerning any other business Mr. Lin had,whereas for our general agent clients we hand all their affairs.

Q Didn't you sign the salvage agreements?

MR. BOWLES: I don't believe that is relevar

THE COURT: I am sort of puzzled as to the relevancy of it. Of course there is a certain attitude in the scope of cross-examination which has to be permitted on credibility. Whatever he did he had apparent authority.

MR. MALOOF: He was the general agent for Mr. Lin. That is the point.

THE COURT: You are assuming he was. I don't know.

MR. MALOOF: I will say this for the record, that Mr. Lin had a non-delegable duty to perform the contract.

THE COURT: Whatever he did, as I understand it the Trader has ratified. The Trader is not trying to disclaim any act on the part of this agent.

MR. MALOOF: I guess that is true.

THE COURT: Am I correct in that position?

MR. BOWLES: Absolutely, your Honor.

THE COURT: So the scope of his agency wouldn't be relevant unless his authority were called into question.

MR. BOWLES: One point on Mr. Maloof's question before about the salvage contract. Mr. Herlihy had a specific authorization from the master, a signed authoriza-

tion from the master of the vessel specifically --

THE COURT: I sustained your objection. There is no use arguing about it.

MR. BOYLES: I don't know why Mr. Maloof is going into this.

MR. MALOOF: It bears on the general agency question in salvage.

THE COURT: The scope of his agency only becomes relevant if the principal disowns something the agent did, repudiates something; isn't that so? Here we have no position by the Trader repudiating anything which Gannet has done or failed to do; isn't that right?

MR. MALOOF: I think so.

THE COURT: So I don't see any need to pursue the issue, but I am not cutting you off.

MR. MALOOF: I will go off to something else

THE COURT: You are not cut off on your gene right of cross-examination.

Off the record.

(Discussion off the record.)

THE COURT: We will take a 10-minute recess.

(Recess.)

BY MR. MALOOF:

Q Mr. Herlihy, I show you Plaintiffs' Exhibit 13J, which is a Telex from Conavco to Gannet Freighting. Conavco is Mr. Lin, isn't it?

A Yes, sir.

Q And I think you have testified already that you received that cable (handing).

A Yes, sir.

Q Do you see the part down, the second to the last paragraph, where it says, "If the port really starts a strike, we will surely consider to discharge elsewhere as all bills of lading have been claused with," and then there is a phrase that you can't make out because it is typed over --

A An overprint, yes.

Q -- "will be for account of cargo receivers/consignees."

About when did you receive that Telex?

A 18 August.

Q And did you Telex back to have some explanation made of what was overprinted?

A Yes, the same evening. You would have an outgoing Telex from Gannet on the 18th telling them that there was a garbled overprint, to please repeat it.

Q And in response to your request did you receive Plaintiffs' Exhibit 13K? I show it to you.

A Yes. This is a Telex we sent out to them requesting a repeat of the overlined wording, and they replied here repeating lines which overprinted, and they go on to clarify what they are.

Q And what was the reply, sir?

A A strike clause, "That in the event of strike all cargoes will be discharged at nearest non-U.S. port and cost for forwarding to New York will be for account of cargo receivers/consignees."

Q Is it fair then to say that you knew as of August 18 about the stamp on these bills of lading?

A Yes, sir.

Q And that the said cargo, in case of a strike in New York, should be discharged at the nearest non-U.S.A. port?

A Yes, sir.

Q Now, what was your concept at that time of the nearest non-U.S.ports?

A Canadian Maritime.

Q Please name them.

A Halifax, St. John, as the nearest.

Q Any others?

A Montreal.

Q How about Quebec City?

A I'm not that familiar with the port. I don't think I would have considered it as in that context, the same context as I considered Halifax, St. John, Montreal.

Q Isn't it closer to New York than Montreal?

A I don't know, sir.

Q You don't know.

You've testified that you concluded that you had to send this snip to a United States port, is that true?

A Not a United States port but to the port of Detroit, where there was non-ILA labor available.

Q And do you know whether the Port of Richmond, Virginia is ILA or not?

A I don't know, sir.

Q Did you investigate it?

A No, sir.

Q Is it fair, Mr. Herlihy, to say that the strike itself was not a surprise but the exact day that it started might have been a surprise to you? Is that a fair statement of your testimony, considering the deposition and your presence here today?

A Yes, sir. If I understand you to mean the

fact that they had a walkout on 1 October contrary to the information I had received 30 September, yes, that was a surprise to find them out on October 1st.

Q But the strike itself was not a surprise.

A No, sir.

Q West Coast had already been out on strike, right?

A As I recall, yes.

Q I think you testified that when the strike started, I think I remember you saying between October 2nd and October 6th, you didn't do anything special, you had a wait and see attitude. Is that what you said?

A Yes. The 1st October, the first the strike started, second, third, we were discussing with the stevedores and others on the negotiating team for the stevedores generally what did they think, how long it would last, what effect the government's wage-price control might have. Then we started to investigate alternate discharge ports.

Q But between October 2nd and October 6th you just stood by to see whether the strike would end?

A No. During that period we were -- well, let me break it down. The 1st, 2nd and 3rd, the first three days, I have no recollection of taking any specific

action regarding diverting the vessel. By the 3rd we felt we had enough information to indicate the strike might be prolonged and therefore, say, 4th, 5th -- 3rd, 4th and 5th, we were checking around for alternate ports in order to make a recommendation to the owner.

Q You say "we".

A Editorial "we." Gannet Freighting, myself particularly.

Q And who did you call?

A Colley Motorships.

Q Personally?

A Yes, sir.

Q Did you call anybody else in Canada?

A No, sir, not to the best of my recollection. I don't recall.

Q During the deposition previously referred to, on page 19 were you asked this question and did you give this answer:

"Q Did you contact the ports directly or did you call?

"A I called agents and stevedores in Canada."

A I didn't want to interrupt you, but it comes to my mind I may have spoken to a Mr. Cullen, Stevedores, Cullen Stevedores, because we had had previous dealngs

with them. In other words, in the normal course of events Colley arranged the stevedoring for me, but I got to know Cullen through business and I do recall I may very well have called Mr. Cullen for his opinion.

Q You may have?

A In addition. Yes, sir, I can't say that absolutely.

Q Who is Mr. Cullen?

A The president of Cullen Stevedoring.

Q Where?

A Montreal. They operate Montreal, Toronto, Halifax.

Q On the same page, 19, were you asked this question and did you give this answer:

"Q So it was Colley Motorships and not you personally?

"A Yes, Colley Motorships."

A Right, that's correct.

Q On page 18 of your deposition, were you aske this question and did you give this answer:

"Q Now, Mr. Herlihy, will you tell us everythin you did to the removal of the problem of where to take the cargo on the Singapore Trader?

"A I contacted everybody that I could think of

the time and in Canada to see if there was any chance of putting the ship up there."

The answer goes very long. With Mr. Bowles' permission, I won't read it all.

MR. BOWLES: I think it all should be read, your Honor.

MR. MALOOF: I will read it all.

"A I checked with the people in Canada, and it turned out that the ILA ports in Canada would not accept the cargo for the vessel quite obviously strike-bound or hot cargo. Any port that I found that was not ILA -- any port that I found that was not ILA was not adequate to accept the cargo. They were open dock ports, some of the small river ports in Canada.

"From previous experience in trading in the Lakes, I knew" -- the word has been changed -- "that Detroit had longshoremen that were not ILA, and I contacted several terminal operators in Detroit to see if they could take the shipment, and one of whom, Detroit Harbor Terminals, agreed."

You gave that answer?

A Yes, sir.

Q Now, it is true, Mr. Herlihy, that it was Mr. Lin who made the decision to send their ship to

Detroit, isn't it?

A Yes, sir. He concurred with my recommendatio to do so.

Q And it is true that you did not consult the cargo interests before this decision was made, isn't it?

A Yes, sir.

Q It was a unilateral decision, wasn't it?

A I don't understand how you mean that.

Q I mean you made it without any consultation with the other party involved, right?

MR. BOWLES: Parties, your Honor.

THE COURT: That's what he means. I think the witness has already said, in effect, that that's what it was.

MR. MALOOF: Okay.

Q Is it fair to say that Mr. Lin didn't contact any cargo interests?

A I have no idea whether he did or didn't.

Q Do you think it would be a fair comment?

THE COURT: If he doesn't know, I wouldn't pursue it. If they contacted anyone, I'm sure they will come forward and show it.

MR. MALOOF: Fair enough.

Q I think in answer to one of the judge's

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A I'm sorry, Mr. Maloof?

Q That number of notices is not something that you weren't able to handle in your office.

A No, sir. We sent them out.

Q And you certainly could have sent them out before the decision was made, couldn't you?

A Why would I send them a notice I was diverting the ship if I hadn't decided to divert it?

Q All right.

If you sent out 250 notices, that means roughly there would be like one company for each two bills of lading, roughly?

A If you wanted to average them, Mr. Maloof, yes. But, as I say, who had 20, 30, 2, that's impossible for me --

Q If there were 20 bills of lading for each company it could be a lot less numbering of notices.

A One company might have had that many. But then you have 50, 60, 70 with one bill of lading that each happened to get a notice. That is just my best estimate of physically how many envelopes were sent out, how many notices were sent out.

MR. BOWLES: Objection to this line. He is trying to make the witness speculate. He has already

A Right. So it is very difficult to remember at this point how many envelopes resulted from the consolidation of the arrival notices.

THE COURT: Can you give us an order of magnitude? Was it 200, 300?

THE WITNESS: I would say about 250, sir. That is about as best I could do.

THE COURT: All right. Fine.

Q During your previous deposition, Mr. Herlihy, on page 30 were you asked this question and did you give this answer:

"Q Do you recall when you first learned that these bills of lading had been claused in New York?

"A When they arrived in the office.

"Q Was that the first time?

"A Yes.

"Q That was about what date?

"A September.

"Q Was it September sometime?

"A Sometime in September."

THE COURT: You are asking him does he recal making those answers?

Q Were you asked those questions and did you give those answers?

A Yes, sir.

Q Did you know, Mr.Herlihy, before this ship arrived that it contained seasonal goods, some of the cargo was Christmas goods?

A Yes, sir. When I asked the owners for a description of thecargo they visited me the approximate makeup and in that Telex they said Christmas decorations, I believe.

Q Did you have fears as early as August 17 that this ship would be strikebound in New York?

A Not, not afraid she would be strikebound, Mr. Maloof. I was afraid it would be very difficult to obtain a berth due to port congestion.

Q Was this Detroit agent a friend of yours, Mr. Herlihy?

A A personal friend?

Q A friend, a personal friend if you want.

A No. A business associate. International Great Lakes Shipping were our sub-agents in the Great Lakes.

Q How long did you know him?

A Three years.

Q Three years?

A I mean I met him when I joined Gannet

Freighting in 1968. They were at that time the agents.

Q And he owed you a favor.

A Wait. I'm sorry, Mr. Malcof. Are you referring to the agent or the stevedore?

Q The agent in Detroit.

A Well, the agent in Detroit didn't owe me any favor. They were our regular sub-agents in the Great Lakes ports.

Q Who was it that you said owed you a favor?

A The stevedore we employed, Detroit Harbor Terminal.

Q He owed you a favor?

A Yes, sir.

Q Did you owe him any favors?

A No, sir.

Q When you recommended to Mr. Lin that the Singapore Trader be diverted to Detroit, did you tell Mr Lin that it would be to his financial advantage?

A Yes, within the context of the --

Q Just answer the question, please. Did you tell him it would be to his financial advantage?

A Yes.

Q Now you may explain your answer. Why and h was it to his financial advantage?

A The stevedoring rate charged, proposed to be charged by Detroit Harbor Terminal, was approximately $5 a ton less than Pittston Stevedoring's rate. This would, on the basis of my estimate that 8000 tons remained in the vessel, represent a saving of $40,000.

However, against that saving of $40,000 the cost of the seaway fittings, the payment of the seaway tolls up and back, the cost of the bunkers consumed and the time delay to the vessel had to be considered by the owner, but on balance there would be some advantage to him.

I'm not in a position and never was to estimate what Mr. Lin valued the daily cost of the vessel at, so I don't know what the ship's time was worth to him.

Q Will you look through Plaintiff's Exhibit 13 and find us the Telex, please -- I think it would be faster that way -- where you told Mr. Lin that it would be to his financial advantage to take the ship to Detroit?

A Right. This is a Telex I sent on October 6th. Do you want me to read it?

Q Rather identify it, Mr. Herlihy, please. What is the letter on the bottom?

A This is 13X.

Q Okay. Which paragraph?

A Paragraphs 5 and 6 refer to it, Mr. Maloof.

Q Will you read it, please?

THE COURT: It is already in evidence, so he ought to read it to himself.

Q Read it to yourself, please.

(Pause)

Do you remember sending that?

A Absolutely.

Q And hadn't Mr. Lin previously explained to you that the stevedoring rates in New York were too high and some way must be found to reduce them?

A Yes, sir.

MR.MALOOF: May I have just one minute to consult, your Honor? I think I'm about done.

(Pause)

MR. MALOOF: No further questions at this ti your Honor.

THE COURT: Any redirect?

MR. BOWLES: Yes, your Honor.

THE COURT: I'm sorry. Mr. Hayden has some questions.

It is about time to break for lunch. Are you going to be more than a couple of minutes?

"Q Well, he wasn't speaking English then?

"A He had a few words of English, but his vocabulary was very little and he reverted to Chinese and the captain translated."

Do you recall giving that testimony?

A Yes, sir.

Q Mr. Herlihy, Mr. Maloof referred you to testimony at page 30 before concerning the bill of lading clause. Do you recall the following testimony on page 31, the next page, concerning the Telex dated August 18:

"A This is a teletype from Gannet Freighting to China Marine dated August 18.

"Q What did you learn from that?

"A Asked them to repeat an overprinted Telex which they had sent to us indicating that in the event of the strike all cargo would be discharged in the United States.

"Q You knew about the clause earlier than the time the ship arrived?

"A Correct."

Did you give that testimony?

A Yes, I did. At the previous testimony when

I said I knew about the clause when I got the bill of lading, I had simply forgotten that Telex of the 18th.

Q October 10, 1971, do you recall what day of the week that was?

A I'll count backwards. The 15th was a Friday, the 14th was a Thursday. It must have been Sunday.

Q Does your office work o n Sunday?

A No, sir.

Q Do you know when the strike in New York, the ILA strike in New York in 1971, ended on the East Coast of the United States?

A About the 28th, I believe, of November 1971.

Q In other words, the strike continued for approximately two months, is that correct?

A Yes, sir. The month of October, about '59, 60 days.

Q Do you know if Cullen Stevedoring is also in St. John?

A They operate there, yes, sir.

Q Concerning the notice to cargo, which I offer now in evidence as Plaintiffs' Exhibit 14 for identification --

THE COURT: It will be received in evidence.

(Plaintiffs' Exhibit 14 was received in evidence)

Q You testified concerning this notice, Plaintiffs' Exhibit 14, that there were approximately 250 of these sent out, is that correct?

A Yes, that's correct.

Q Do you have any opinion as to whether or not it would be practical, prior to making a decision to send the ship, for example, to Detroit to circularize the 250 cargo interests and obtain their views?

MR. HAYDEN: Objection.

MR. MALOOF: Objection.

THE COURT: Sustained.

Q Can you tell us whether or not you considered consulting the cargo interests prior to the decision to send this ship to Detroit?

MR. HAYDEN: Objection. Leading the witness.

THE COURT: Well, it is leading, but I think the record already shows he did not.

MR. BOWLES: I am asking if he considered it.

MR. MALOOF: He said why should I.

THE COURT: If he considered it? All right.

I'll allow him to answer whether he considered it.

A No, I did not consider it.

Q Why not?

MR. MALOOF: Objection. Mental process.

THE COURT: Well, sometimes his mental process can be admissible. I'll take it for what it is worth. He says he didn't consider it.

That is a little different than considering it and rejecting it, isn't it, Mr. Bowles?

MR. MALOOF: Why did he not consider it?

THE COURT: Yes. Why did he not consider it? I'll sustain the objection to that one.

THE WITNESS: Does that mean I should answer it?

THE COURT: No, don't answer it.

Q In your communications with the stevedore or agent in Detroit, can you tell us whether you had any advice as to when a decision must be made to go into Detroit?

A The stevedore asked me to be as prompt as possible to accept his offer, again for the same reason that I said before, that the regular Great Lakes Navigation season was drawing to a close and that's their busiest time, their most congested time. So

in order for him to plan handling the vessel I had to give him an answer just as quickly as possible. A day was important, actually. One day to the next was important.

Q When you send a notice to a notify party, do you know whether or not they pass it on to the actual consignee or other party in interest?

MR. MALOOF: Objection.

THE COURT: Sustained.

Q In your experience as an agent, in sending out notices, etc., to notify parties on a bill of lading for a ship, is there any approximate time that you have for receiving responses? What is your experience in that --

MR. MALOOF: Objection. How can anyone answer that?

THE COURT: I don't see how he could possibly answer it, because the notice sent, Exhibit 14, shows thta the vessel sailed, it says in the second paragraph, from New York 0800 October 8. So I will assume from reading the exhibit which is undated, that at the time this exhibit was issued the vessel had sailed.

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MR. BOWLES: I believe that is in part correct. The witness said the notices were sent the 7th, 8th and 9th.

THE COURT: And in the deposition he said 8th, 9th and 10th.

MR. MALOOF: 9th and 10th.

MR. BOWLES: The 9th and 10th.

MR. MALOOF: That means 9th and 11th.

THE COURT: Even if they were sent the 7th they probably would not have been received by anyone on the 8th. I don't think there is much point in your pursuing that further.

MR. BOWLES: The point I am trying to bring out has to do with the practice in terms of whether or not it is practical with a multitude of cargo interests in a situation like that.

THE COURT: That is an inference the Court has to draw from all the surrounding facts including how many were sent, including when the decision was made, all of the input that went into the decision. It is not relevant to ask him to testify on the ultimate fact or the ultimate issue in the case, if it is an issue in the case, whether it was practical to give any different notice and that is objectionable. Any surrounding facts which affected

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his conduct or which reasonably might have affected his conduct are admissible, but he can't testify as to whether it was practical to do it differently. That is for the Court to decide if it is relevant.

MR. BOWLES: I believe it is relevant here.

THE COURT: Let him bring in any facts that I don't already have.

Q If you had to send out notice to the notify parties concerning the possibility of sending the ship to Detroit or some other port, would there be a delay in obtaining their reply?

MR. MALOOF: Objection.

THE COURT: Sustained. I have to say to you that the Court will infer that such a notice would take at least a couple of days to be delivered, perhaps a day for the adversee to notify the real party in interest or the consignee and as to some of these bills of lading where the shippers order or where they are negotiable it would be totally unfeasible, wouldn't it?

MR. BOWLES: As long as the point is clear to the Court.

THE COURT: That is not a matter for testimony.

MR. BOWLES: I apologize for doing that.

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THE COURT: That is all right. Let's go ahead.

Q At what point did the shipowner complain of costs of the stevedoring in New York?

A When I gave him the original indication I received that it would be about $20, I think was the figur but that is also in the Telex, Mr. Bowles. You can find i exactly.

THE COURT: We are going to have to break for lunch.

MR. BOWLES: I will only be very short.

THE COURT: All right.

Q What date is that, Mr. Herlihy?

THE COURT: It is in the record. The Court will find the date from the Telexes.

MR. BOWLES: All right.

Q Did you give a response to Mr. Lin's inquiry?

A I'm sorry, I lost you. Do you want me to fin the Telex where he complained?

THE COURT: What we want you to find is your response to his complaint.

Q Would you identify your response, please?

A Yes. Let me find that now.

THE COURT: If it is in there.

THE WITNESS: Yes, it is.

THE COURT: They are all in evidence. You can refer to it in your post-trial brief.

A Yes, here it is. I indicated on the 17th of August -- I Telexed and included in the Telex I had an estimate of $20 per payable ton plus wharfage.

Q What occurred next?

A He replied on the 13th:

"With reference to your Telex of August 17 we feel that the stevedores in New York is extremely expensive so please think some way to reduce it."

To which I replied:

"Reference costs New York. We aware very high but please understand rates" --

That is the stevedore rates.

"based on tonnage production by gangs and this type cargo being so light and so many pieces is slow working. We will do our utmost negotiate the best possible rate for you. In this connnection please confirm that all cargo to be delivered to consignees by bill or lading only so that no sorting within the bill of lading is required which sorting is very expensive."

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Q Let me interrupt you there. Did Mr. Lin's comment and your reply concerning stevedore costs in New York have anything to do with the decision that the ship go to Detroit?

MR. MALOOF: Objection.

THE COURT: Insofar as you participated in making that decision I will permit it to be asked. He doesn't know what went on in Mr. Lin's mind.

MR. MALOOF: Absolutely not.

MR. BOWLES: He made certain recommendations to Mr. Lin.

THE COURT: He can be asked as to his own knowledge.

Q As to your own knowledge, did the cost of stevedoring in New York have anything to do with going to Detroit?

A No, it had no bearing.

THE COURT: Didn't you say you saved enough on stevedoring at Detroit to justify his bunkers and its time delay and his tolls on the Seaway for getting to Detroit?

THE WITNESS: The arithmetic worked out that way, but you see the rate actually, the New York rate is negotiated from the $20 estimate down to about $18.

THE COURT: Even at 18, did it pay you to go to Detroit?

THE WITNESS: No, sir. That is the New York actual price paid. The Detroit stevedore quoted me $13 and based on what was remaining on the ship to be discharged at Detroit would be charged at the lower rate. We had already paid $35,000 discharging in New York. But if the point is that did we pick Detroit as a low rate as opposed to New York, no, sir. We picked Detroit as the port where we could work the vessel and then got a rate from them.

Q Mr. Herlihy, at what point in time did you negotiate the rate for Detroit; what date? Was that before or after the strike commenced?

A After.

Q Mr. Herlihy, going back to the time where you were in contact with Colley Motorship concerning the possibility of bringing the Singapore Trader into Canada, if you had been told that the ship could go into a Canadian port if she changed her documents what if anything would you have recommended?

MR. HAYDEN: Objection.

THE COURT: Referring to changing the documents in terms of striking out one discharge port and putting in

THE COURT: Certainly.

MR. MARTOWSKI: Mr. Quinn, would you take th stand, please.

D A V I D W I L L I A M Q U I N N , called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARTOWSKI:

Q Where do you presently reside, Mr. Quinn?

A 79 Sunnybrae Avenue, Halifax, Nova Scotia, Canada.

Q By whom are you presently employed?

A By the Halifax Longshoremen's Association.

Q And in what capacity?

A President and business agent.

Q How long have you been a member of the ILA?

A 1954.

Q What kind of work does the ILA do at the Port of Halifax?

A Loads cargo vessels and discharge cargo vessels.

Q How long have you been president and business

agent of the ILA at Halifax?

A Since January of this year, 1974.

Q Is there any other longshoremen's association at Halifax that loads or discharges cargo?

A No, there isn't.

Q Is the ILA at Halifax related or affiliated with the International Union?

A Yes, it is.

Q Is there a written document that describes that relationship?

A Yes. The international constitution.

Q What is the relationship or affiliation between the Halifax local and the international union?

A The International Longshoremen's Association is the parent body.

Q Where is the international union located?

A In New York City.

Q Who is the president of the international union?

A Mr. Gleason.

Q During your membership in the ILA at the Port of Halifax have you had occasion to learn of strikes at other union member ports?

A Yes, I have.

Q Has the Halifax local established a policy with respect to the occurrence of strikes at other union member ports?

MR. MALOOF: Objection to relevance.

THE COURT: We'll have to fix a time.

Q Directing your attention to September-October 1971, Mr. Quinn, what was your position with the Halifax ILA at that time?

A Secretary-treasurer.

Q Do you recall an ILA strike in October 1971 which affected the East Coast of the United States?

A Yes, I do.

Q When did you first learn of the strike?

A The first day of the strike, October 1.

Q How did you first learn of the strike?

A By press, radio.

Q And you testified that the strike commenced on October 1?

A Yes.

MR. MALOOF: I didn't hear that.

THE COURT: He said the strike began on October 1st.

Q Now, at or about the time of the commencemen of the strike, in October 1971, did the Halifax local

receive any communication or directive from the international union regarding the discharge of ships which had left strikebound East Coast ports?

A Yes.

Q Can you tell me what directive or communication was received?

A Not to work ships that had been diverted from the strikebound ports.

Q In October 1971, did your Halifax local have an established policy regarding the discharge of ships which had left strikebound ports?

A Yes, they did.

Q What was the policy?

A To follow the same policy as had been followed in the past, by not working ships that came out of the strikebound port.

Q What does the term "diverted ship" mean to you?

A A ship that is diverted from the strikebound port into another port.

Q What does the term "hot ship" mean to you?

A Hot ship means a ship that has been diverted from a strikebound port.

Q And what does the term "hot cargo" mean to

jgr8 Quinn-direct

you?

A Hot cargo would mean a cargo that is aboard a strikebound vessel.

Q At or about the time o fthe commencement of the strike in October 1971, did your Halifax local receive any requests to discharge vessels which had left strikebound ports?

A Not to my knowledge.

Q To your knowledge, did the Halifax ILA in October or thereafter during the East Coast strike discharge any vessels which had left strikebound ports?

A Not to my knowledge.

Q Mr. Quinn, assuming that in October 1971 you were requested to discharge the Singapore Trader, which was loaded with Hong Kong cargo destined for New York, which had in fact discharged 20 per cent of her cargo at New York and that further discharge was prevented by the strike.

Now, assume further that her cargo is being carried under this bill of lading (handing), and I am handing the witness the bill of lading which has been stipulated to by the parties and which is attached to the agreed findings of fact, now I ask you, Mr. Quinn, would the Halifax local of the ILA have discharged the

Singapore Trader if she called at Halifax to avoid the effect of the ILA strike on the East Coast of the United States?

MR. MALOOF: Objection unless he establishes it was his decision to make it.

THE COURT: If he knew of a firm, fixed policy, I will permit him to testify to it. He was an official of the local up there at that time?

MR. MARTOWSKI: Yes, he was.

THE COURT: That's what he is asking you. Was there any policy in effect with respect to the state of facts he has asked you to assume?

THE WITNESS: In my opinion this ship would not have been worked in the Port of Halifax.

MR. MARTOWSKI: Thank you, Mr. Quinn.

May I ask the witness one other question, your Honor?

THE COURT: Certainly.

Q How long were you a member, or have you been a member of the ILA at Halifax?

A Since 1954.

MR. MARTOWSKI: Thank you.

SINGAPORE 5/14 T1Bpm

CROSS EXAMINATION

BY MR. MALOOF:

Q Do you know Mr. Schnare?

A Yes, I do.

Q What position did Mr. Schnare hold in October, 1971 in the union in Halifax?

A He was a member of the union in 1971.

Q Was he an officer?

A No.

Q Was he ever the president of the union?

A Yes, he was.

Q When?

A '72 and '73.

Q At that time was he your superior?

A He was.

Q Was it your testimony, Mr. Quinn, that no divert ships were discharged in Halifax during this 1971 strike?

A Could I ask you to repeat that question, please?

(Question read.)

MR. MARTOWSKI: May I have Mr. Maloof specify wh he means by "diverted"?

THE COURT: I think the witness has told us wha he means by "diverted."

MR. MALOOF: I thought he had.

MR. MARTONSKI: Is that the witness' understanding of what the witness means by "diverted?"

MR. MALOOF: What he himself defines is the important thing.

THE COURT: I understand him to tell me a diverted vessel was a ship that had been destined for a strike-bound port and which had been changed from that strike-bound port to Halifax.

Is that what you are talking about?

THE WITNESS: A diverted ship, as I would answer the question, your Honor, was a ship that was into a strike-bound port and was affected by a strike and left the port.

THE COURT: She had to have come into the port during the strike or been in the port on the day the strike began to become a diverted ship?

THE WITNESS: That's the question that I answered.

THE COURT: All right. He is now asking you whether any such vessels were discharged in the 1971 strike in Halifax.

THE WITNESS: Not to my knowledge.

BY MR. MALOOF:

Q Would you have knowledge of all the ships discharged in Halifax in October of 1971?

A I would.

Q And how would you come into that knowledge?

A Being a dispatcher, part-time dispatcher at that time.

Q Would you name some of the ships?

A I couldn't name them right offhand, no.

Q Not even one of them?

A Are you asking me a diverted ship?

Q Yes.

A We wouldn't know if there were any diverted ships.

Q You wouldn't know?

A No. They could come into the port and we may not know that they were a diverted ship. All ships coming and going --

Q In other words, a ship could come in and discharge and you wouldn't know it was diverted?

A That could be.

Q Well, couldn't you look at the piece of cargo and see what the destination was from the crate?

A It is not -- it wouldn't be my job to go and look at the cargo. I would be working in the office.

THE COURT: Who enforced this policy that you were telling us about?

THE WITNESS: Who enforced the policy?

THE COURT: Yes. Whose duty was it to see to it that no diverted ship was discharged?

THE WITNESS: It would be the business agent and the assistant business agent's job to see that this was done.

THE COURT: You were not holding that position at that time.

THE WITNESS: NO. I was secretary-treasurer at that time.

THE COURT: Were the business agents reporting to you? Were they your subordinates?

THE WITNESS: They were my superiors.

BY MR. MALOOF:

Q Now, Mr. Quinn, you are not going to tell us that no cargo -- that cargo coming into Halifax did not have New York on it in October, 1971, are you?

A No, because often there is cargo that goes through Halifax to New York and of course vice versa.

Q So a piece of cargo could say New York on it, destination, and it would have been discharged in Halifax in 1971 in October, during the strike, right?

A I am not -- I wouldn't know if it were done in October.

Q But you wouldn't know that anyhow. You were in the office.

A That's right.

Q Being in the office, but you knew the ships that came in, right?

A Yes. At that time I would know the ships because of being a dispatcher. They would tell me what ship was coming, the name of the ship.

Q How about the Eurylochus?

A I know of no ship of that name.

Q You don't know about that ship. The Wiser Agent, October 20. Do you know about that one?

A No. I couldn't remember the names of the ships.

Q And the Eurylochus, we will try to refresh your recollection, October 30 she came in. You don't know about that one?

A No.

Q Satsuma Core, October 16. Does that ring a bell, Mr. Quinn?

A No, it doesn't.

THE COURT: On a given day in October, 1971, how many vessels were being discharged in the port of Halifax?

THE WITNESS: On a given day in October?

THE COURT: What was the range or what number?

THE WITNESS: It is usually anywhere from one to three on the average day.

BY MR. MALOOF:

Q Mr. Quinn, to save a little time, I will show you a list of slips --

MR. MARTOWSKI: I object to this, your Honor.

THE COURT: Mark it for identification.

MR. MARTOWSKI: I think Mr. Maloof should show the relevance of the list.

THE COURT: I will let him show a list.

(Claimants' Exhibit A was marked for identification.)

Q I show you Claimants' Exhibit A for identification, which is a list of slips with dates, berth number and the amount of tons discharged and ask you if that doesn't ring a bell of some kind as to the ships which were discharged, the diverted ships?

THE COURT: Does it refresh your recollection?

Q Does it help, Mr. Quinn?

A Are you referring to all the ships here or just the ones in October?

Q Any one of them or all of them.

A There are some there that I recognize as ships

calling in at the port of Halifax.

Q Which ones?

A Hoegh Orchid. There are some vessels there, but I am not sure that they called during that period, other vessels, names that I recognize. I couldn't say that they called in that period. The same with the Hoegh Orchid. I couldn't say that they called during that period.

Q But you do remember the Hoegh Orchid coming into Halifax at that time?

A She is a regular caller at Halifax.

Q Can you tell us whether her original destination on this particular voyage was Halifax or some other port?

A I couldn't say if her original destination, but she has been a caller from time to time in Halifax all through the years.

Q But you don't know if she was diverted or not, do you?

A No, I don't.

Q I think you said the international union sent a directive to Halifax

A There was a message that came from international headquarters.

Q Would you have a copy of that with you?

A No, I don't.

Q Did you see it?

A No. It came by phone.

Q It came in by phone. It wasn't in writing?

A No.

Q Who called whom?

A I was called into our international office.

Q You didn't take the call did you?

A I answered the telephone in the dispatch office saying there was a call for the international representative. I passed the receiver over to him.

Q Then you handed it to someone else?

A Right.

Q Did you listen in on the call?

A No.

Q Do you know what was said?

A No. I can only say what was told to me later, a few minutes later.

MR. MALOOF: I move to strike that, your Honor, as not responsive.

MR. MARTOWSKI: You asked the question.

MR. MALOOF: I asked him if he knew what was said. That is yes or no.

THE COURT: Well, all right. I will strike it. However, if this man was given orders or instructions by

an international officer, by a person he knew to be an international officer, I would take that testimony.

MR. MALOOF: But he wasn't. The international officer spoke to someone else.

THE COURT: Do I understand there is an international officer up in Halifax?

MR. MALOOF: I didn't know that.

Q There is one in Halifax? Who is that?

A His name was Campbell.

Q But this came in by telephone from Mr. Campbell?

A For Mr. Campbell, yes.

Q For Mr. Campbell. From where?

A The only thing I know, it came from New York.

Q I think you said there was a policy that the union wouldn't work ships that come out of a strike-bound port?

A That is the policy.

Q And that means that if they never went into a strike-bound port, they could be discharged at Halifax, is that right?

A Possible.

Q REgardless of destination?

A Regardless of destination.

Q Regardless of how the bill of lading reads?

A We wouldn't have anything to do with the bill of ladi

pm

Q What would you be concerned with?

A We would be concerned about whether or not the ship came out of the strikebound port.

Q And how would you know whether it came out of a strikebound port?

A Through messages from one port to another naming the vessels.

Q Messages from whom?

A It depends on the people that would know. They sometimes would be from another local, sometimes from an ILA local of checkers that would notify the checkers' ILA local in the port that the ship was going to and then of course somebody from the ILA checkers union would call the longshoremen's ILA of 269. That would be us.

Q So if you don't get any information that it came out of a strikebound port you would unload the ship, wouldn't you?

A It would happen. We wouldn't knowingly do it.

Q So you would unload the ship; right?

A If we didn't know, if we didn't know anything about it.

Q You would have unloaded the Singapore Trader if you didn't know she came from New York?

A We would have to know whether she came out of

a strikebound port in order to refuse to load it or unload it.

Q If you didn't know you would have discharged her, wouldn't you?

A Possibly.

Q Not definitely?

A If we knew that it came out of a strikebound port we wouldn't unload it.

Q The foundation of the questionis that you don't know, you don't receive any information. Please answer the question.

A I would have to ask you to ask me the question again, please.

MR. MALOOF: Mr. Reporter, would you read it, please?

THE COURT: Please reframe the question.

Q If you don't learn that the ship was in a strike-bound port wouldn't you definitely unload it so that your members can make some money?

A That would happen.

Q And the ship that is at sea destined for New York at the time of the strike which diverts to Halifax, there i no problem there ther, is there?

A Not usually, no.

Q You would discharge that ship, wouldn't you?

A Not unless it was into a strikebound port, we wouldn't refuse to load it.

Q Well now, the question is that it doesn't go into a strikebound port, she is at sea and she diverts to Halifax. You would have discharged her, would you not?

A Even if it is coming direct off the sea into Halifax we would work it.

Q Even though she is bound for New York originally?

A Well, whatever port it is bound for.

Q Let's go a bit further. Ifyou have a bill of lading that says New York or Halifax, what would you do with that ship?

THE COURT: The man has told us he never sees the bill of lading.

THE WITNESS: That is right. We don't have anything to do with the bill of lading.

Q Did you ever look at the manifest?

A We don't have anything to do with manifests unless the ship is in doubt. Then if it has been in New York and comes out or New York is strikebound and it comes into an ILA port, this is when the --

Q You don't learn that from documentation, right, in your experience?

A We have very close relations with the steamship companies who make this information known to us.

Q In other words, you don't learn it from documentat

A Not us personally.

Q I am talking about your company, which discharges the ships.

A It wouldn't be my company. It would be men that are under my jurisdiction.

THE COURT: Who do they work for?

THE WITNESS: They work for the different steamsh companies.

THE COURT: Not the stevedoring companies?

THE WITNESS: Yes, the stevedoring companies, that is right. There are five or six stevedoring companies in the Port of Halifax and this is who the longshoremen work for.

Q I think you testified that nobody called you or your union and asked that the Singapore Trader be discharged in October of 1971?

A Not to my knowledge.

Q Now, Mr. Martowski, who asked you some questions on direct examination, showed you a bill of lading and asked you a question about that, but since you never see bills of lading I suppose we can consider that that bill

of lading was immaterial to your answer; right?

A I'm not sure that I understand what you mean.

MR. MARTOWSKI: Objection.

THE COURT: I can make a determination of immateriality. He indicated that he doesn't see a bill of lading in the ordinary course of his work. I assume you have no doubt about the correctness of that answer, do you?

MR. MALOOF: The correctness of the witness' answer --

THE COURT: That he doesn't see a bill of lading?

THE WITNESS: No. We don't have anything to do with them.

THE COURT: Your business agents don't see them?

THE WITNESS: If we go in and request to see them, without a doubt they would show these, but in the regular course of our work we don't see these things.

MR. MALOOF: I don't agree that the witness' answers are accurate because I have contrary evidence from the union.

THE COURT: You may continue to cross examine him. I understand from the thrust of your question that showing him a bill of lading was not the basis --

MR. MALOOF: I have a contrary answer from a superior.

THE COURT: I merely sustained the objection because I understood the witness to say that he was never concerned with the bill of lading.

Q Are you familiar with the way other ports in Eastern Canada handled the strike?

A I am somewhat familiar.

Q You are not as familiar with the other ports as you are with Halifax?

A Indeed, I wouldn't be, no.

Q Were there differences between the ports and how they hanlded the situation?

A Not to my knowledge, there isn't.

Q Do you think they all handled it the same way as you?

A Yes, I'm of that opinion.

Q How about Quebec?

A I would say probably Quebec would do the same thing, that is, take the same stand.

Q You are not sure, you are saying "probably"?

A No, I'm not sure, no.

Q Mr. Quinn, assuming the Singapore Trader had aboard about 8,000 long tons of dry cargo, cotton and boxes like that in October 1971, was there sufficient sheds

and pier space to accommodate that cargo?

A I really don't have anything to do -- we don't, I should say, have anything to do with renting shed space and allotting shed space to cargo consignees, so at this time I couldn't actually give you a right answer. I could assume that there would be space.

Q Do you know of any ship which was turned away from Halifax during the East Coast U.S. strike?

A No, not to my knowledge.

THE COURT: Are you talking about turned away by the ILA?

MR. MALOOF: By the union, yes,sir.

THE COURT: Do you understand the question?

THE WITNESS: I understand the question. I know of no ships that was turned away.

MR. MALOOF: They are the only ones, your Honor, who would. I will have proof of this.

THE COURT: I don't know that.

MR. MALOOF: The harbor masters would always let them in if there is pier space. It will be up to the union if they are discharged or not. That will be up to the union.

THE COURT: Do you have anything further?

MR. HAYDEN: No, your Honor.

MR. MARTOWSKI: I have just a few questions, your Honor.

REDIRECT EXAMINATION

BY MR. MARTOWSKI:

Q Mr. Quinn, I believe in response to Mr. Maloof's cross examination you testified that you recall the name of the vessel the Hoegh Orchid?

A Yes, I do.

Q As possibly having called at Halifax in October of 1971?

A No, I recognize it as a regular caller to Halifax as having frequently called in Halifax.

THE COURT: What do you mean by frequently?

THE WITNESS: There are a number of the Hoegh line vessels and they don't all call each month. Maybe it would be the Hoegh Orchid or Hoegh Pride. There is a number of Hoegh Line vessels.

Q Do you recall if that vessel called at Halifax in October 1971?

A No, I don't.

Q I think you testified that it was the policy of the Halifax local in October 1971 not to handle vesse which had previously called a strikebound port, which are what you have referred to as diverted ships; is that righ

A That is right.

Q How long has that policy been in effect?

A It has been in effect all during my membership, which is since 1954. How long beyond that, I couldn't say, but it has been in effect quite some years.

Q I think Mr. Maloof also asked you if you were familiar with the position taken by other Canadian ports during the strike in October 1971; is that correct?

A Yes, he did ask that question.

Q What was your reply?

A I said I wasn't as familiar with the other ports as I would be with Halifax, but I assumed that they would take the same stand. I was of that opinion that they would take the same stand, the same position regarding a strikebound vessel as the Port of Halifax.

Q Have you ever heard of other Canadian ports not taking the same stand?

A I can't say that I have.

Q I believe you also testified that a telephone call came from the International office around the time of the beginning of the strike, is that correct, 1971?

A It came from New York, that is right.

Q Do you know from whose office in New York?

A No, I couldn't say whose office it came from

in New York.

Q You have also mentioned the name of Mr. Lewis Campbell; is that correct?

A Not Lewis Campbell.

Q In connection with this telephone call?

A There was a Mr. Campbell who was at the office at that time when the phone call came.

Q What was his position with the union?

A International representative.

THE COURT: What is his first name?

THE WITNESS: John.

Q I'm sorry, John. I thought it was Lewis.

Was he your superior at this time?

A Yes, I would -- he represents the International Longshoremen's Association in the East Coast ports.

Q Did he thereafter discuss the substance of that telephone call with you?

A Yes, he did. Not only with me, but with the other members who were my superiors.

Q What did he say?

A He said that was a call requesting us not to work strikebound vessels that came out of the strikebound port.

MR. MALOOF: Objection, hearsay.

THE COURT: It may not be hearsay. It depends on the contents of the call.

Did he give you any orders?

THE WITNESS: He passed on the information that he got,which was a direction to us.

MR. MALOOF: I object.

THE COURT: I will overrule the objection.

Q What was the directive, Mr. Quinn?

A Not to work the vessels that came in from the strikebound port.

THE COURT: Was this a directive or a request?

THE WITNESS: This was the directive that he got and passed it on to us.

THE COURT: In what form?

THE WITNESS: Just in the form that I am telling the Court.

THE COURT: What is that?

THE WITNESS: Thatwe not work the strikebound vessels.

THE COURT: Is this a direction or a request?

THE WITNESS: This would be a direction.

Q Did he state to you the origin of that direction?

A No.

MR. MARTOWSKI: I have no further questions.

RECROSS EXAMINATION

BY MR. MALOOF:

Q Mr. Quinn, at that time did you have a meeting of the union?

A No, we didn't.

Q Is your affiliation with the New York ILA so strong that they can direct you around like that?

A I would like to make this known, that I didn't say where the call came from.

Q You said New York.

A Yes, that is right, but I didn't say where in New York. I don't know where in New York the call came from. I don't know who made the call.

Q Would you answer my question? The question was: Is your affiliation with the ILA, New York such that they direct you around from the United States to Canada?

A We are all members of the same organization, but don't order us around. They just inform us that they a on strike and, of course, to follow the procedure that we always follow.

Q The Judge asked you a question before: Did the direct you not to take these ships, and the answer was th they didn't direct you; isn't that true?

A I got the direction from the International representative there.

Q Not from New York?

A I got it from the International representative in Halifax.

Q Not from New York, Mr. Quinn?

MR. MARTOWSKI: I will have to object.

THE COURT: He can answer that.

MR. MARTOWSKI: He is arguing with the witness.

THE COURT: I will take it.

I take it Mr. Campbell directed him.

THE WITNESS: That is right.

THE COURT: Not the telephone call?

THE WITNESS: The telephone call was not to me. It was to the International representative there.

Q Is local union policy in Halifax decided without the meetings of the membership?

A The policy -- if you are referring to the policy that I mentioned of not working strikebound vessels, it was decided by a meeting many years ago, to my understanding.

Q While you were there?

A I wouldn't -- no, not while I was there.

Q You wouldn't know about it?

A Not of that particular motion, no.

MR. MALOOF: No further questions.

MR. MARTOWSKI: One further question, your Honor

REDIRECT EXAMINATION

BY MR. MARTOWSKI:

Q Mr. Quinn,I think you testified that in October 1971 you were secretary-treasurer of the ILA at Halifax?

A That is right.

Q During the time of the strike, did you have occasion to discuss the ILA position with respect to handli diverted ships with other stevedores, with stevedoring companies at the port of Halifax?

A No.

MR. MARTOWSKI: Thank you.

THE COURT: Is everybody finished with Mr. Quinn?

MR. MALOOF: That is all.

THE COURT: All right, sir, you are excused.

(Witness excused.)

MR. MARTOWSKI: Mr. Smith, will you take the stand,please.

RONALD BABINGTON SMITH, called as a witness in behalf of the plaintiffs, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARTOWSKI:

Q Where do you reside, Mr. Smith?

A I reside in St. John's, 183 Tower Street, St. John's, New Brunswick, Canada.

Q By whom are you presently employed?

A I am employed at Brunterm Terminal Limited. It is a container terminal.

Q Is that located in the Port of St. John?

A Yes, in the Port of St. John.

Q In what capacity are you so employed?

A I'm a worker.

Q A stevedore?

A I am a stevedore. I pick it up and lay it down.

THE COURT: You are a longshoreman?

THE WITNESS: I'm a longshoreman.

Q Are you a member of the International Longshoreman's Association at the Port of St. John?

A I am.

Q How long have you been a member?

A I joined in November 1932.

Q Have you ever held an office in that associatio

A I was president for ten years.

Q Which years?

A I was president in 1962 to 1964, 1964 to 1966. I was out of office in 1966 to 1968. I was back in office again from 1968 onward to 1974.

THE COURT: So you are presently the president?

THE WITNESS: No, in March, the second Tuesday of March, I then turned the office over there to my success I did not reoffer. I was too old.

THE COURT: It means he didn't stand for reelecti IN English speaking countries they say "stand for election" but in America they run for office.

Q What kind of work does the ILA in the Port of St. John do?

A The ILA loads and unloads freight, bulk cargo, grain and sugar and any other type of cargo that comes to the port.

Q Is there any other longshoremen's association in the Port of St. John that loads or discharges cargo?

A No.

Q I think you have testified that in October 1971 you were president of the St. John's ILA; is that correct?

A That is true.

Q What were your duties as president of the ILA at that time?

A As president of the ILA at that time I was the chief officer. I oversaw the working of the business agents, secretary and the other officers in the union. I also had to work myself. It was an office that is not a paid office. That is about the gist of it.

Q Is the St. John ILA related or affiliated with the International union?

A Yes.

Q What is the nature of the relationship or affiliation?

A We are a local of the International Longshoremen's Association, AFL-CIO.

Q Is there a written document that describes the relationship?

A We have our charter from the ILA in 1911, I believe it is.

Q Where is the International Union located?

A 17 Battery Place.

Q Who is the president?

A Thomas Gleason.

Q Directing your attention to September-October

1971, do you recall an ILA strike which affected the East Coast ports of the United States?

A We had a telegram sent to me from Gleason and one to the union itself, to the secretary. The secretary is supposed to receive all communications. And the telegram was sent to me saying that the East Coast port was on strike and not to work diverted ships.

Q Is that the first time that you learned of the strike?

A It was in the paper, I believe.

Q Do you recall on what date the telegram was received?

A I couldn't say. I don't know. I don't remember

Q Do you have a copy of the telegram with you toda

A I had copies of them, but I turned them over to my successor when he went into office.

Q Prior to coming to New York did you search your records in an attempt to find the telegram?

A No, actually I didn't.

Q What does the term diverted ship mean to you?

A As far as we are concerned in the Port of St. John, that is a ship that is in another port. It is then taken out of that port and then sent to St. John. That is a diverted ship.

Q When you say another port, do you mean a strike-bound port?

A It doesn't matter, any port.

Q What does the term hot ship mean to you?

A A hot ship means that they are in trouble with that port and we are not going to help that ship out to hurt that port, to come in.

Q Would you also refer to a ship leaving a previously strikebound port as a hot ship?

A Right, yes.

Q Did the St. John local of the ILA establish any policy in October of 1971 regarding the discharge of ships which had previously left the strikebound ports?

A Not at that time. That policy was already set long before I came into office.

Q This was a standing policy?

A Yes, sir.

Q Did it continue through October 1971?

A That is right.

Q Is it presently the policy?

A It is still the policy, yes.

Q At or about the time of the commencement of the strike in October 1971 did the St. John local receive any requests to discharge any diverted ships at the Port of

St. John, ships diverted from strikebound ports?

A I had a call from Cullen Stevedores and I said "Where is the ship?"

And they said "In New York."

I said "Leave it there."

Q Do you recall how many such requests you receive

A It could have been four or five, but we send -- we send our notification to the harbor master to tell him he was not to bring any ships in or we would not work the if they brought them into the port.

Q To your knowledge, Mr. Smith, during the durati of the East Coast strike in 1971, did the St. John ILA discharge any vessels whioch had previously called at strikebound ports?

A Not to my knowledge.

Q Mr. Smith, assume then in October 1971 you were requested to discharge the Singapore Trader which was loaded with Hong Kong cargo destined for New York and had in fact discharged 20 per cent of her cargo at New York and that further discharge was prevented by the ILA strik Assume further that the cargo was being transported pursuant to this bill of lading.

A Actually I'm a laborer. I do not --

Q The question is not over.

THE COURT: I think he is trying to indicate to you that the bill of lading has no place.

THE WITNESS: It has no place as far as I'm concerned.

THE COURT: Listen to his question. Then you can answer.

THE WITNESS: Sorry.

Q Let me give you the first part of the question again, then.

Assume that in October 1971 you were requested to discharge the Singapore Trader which was loaded with Hong Kong cargo which had called in New York and had discharged 20 per cent of her cargo but had then left New York and further discharge had been prevented at that port because of the East Coast strike, would you have discharged this vessel if she called at St. John to avoid the effect of the ILA strike on the East Coast of the United States?

A No.

Q Would you consider the Singapore Trader in October 1971 as a hot ship?

A If she was in the Port of New York at that time I would consider her a hot ship.

MR. MARTOWSKI: Thank you, Mr. Smith.

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CROSS EXAMINATION

BY MR. MALOOF:

Q If a ship has an option of discharging in New Yor or St. John, is it still a hot ship?

A It is a hot ship if she has gone into any port that is on strike, yes, sir.

Q Even though it could have come into St. John?

A Even though it could have gone anywhere.

Q Mr. Smith, what was Quebec's position during the strike?

A I do not have anything to do with Quebec.

Q You don't know what that position was?

A No, sir. You will have to talk to Norman Quigley for that.

Q I did.

THE COURT: Never mind.

A I tried to help the gentleman out.

Q Did I understand you to say that you personally were requested that the ship be discharged in St. John?

A I was asked by Mr. Quigley whether he could bring in this ship. I said "Where is it from?"

He said "In New York."

I said "Leave her there."

I then spoke to either McNeil or McCloud, the

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harbormasters. I told him that if any ship in United States East Coast ports at that time, do not bring them into St. John.

MR. MALOOF: No further questions.

THE COURT: Anything else for Mr. Smith?

MR. HAYDEN: No questions, your Honor.

REDIRECT EXAMINATION

BY MR. MARTOWSKI:

Q Mr. Smith, during the times you were president of the ILA local at St. John, didyou have occasion to discuss the ILA policy with respect to discharging diverted ships, ships diverted from strikebound ports with stevedoring companies in the Port of St. John?

A I don't understand what you mean.

Q During the periods of other strikes while you were president of the ILA at St. John, did you have occasion to discuss the ILA policy at St. John with respect to handling cargos from ships which had left strikebound ports with stevedoring companies at St. John?

A We have given them directions as to whether we would work them or not, if this what you mean, and we have told them that we would not work any ship that was in any port on strike.

MR. MARTOWSKI: Thank you, Mr.Smith.

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THE COURT: If the ship goes onto an American port such as Detroit you lose that work?

THE WITNESS: That is right.

BY MR. MARTOWSKI:

Q Have you done this on a number of occasions, Mr. Smith?

A I couldn't say offhand, but we have turned ships away before. This is not the first one.

MR. MARTOWSKI: Thank you.

THE COURT: You don't know the name of this vesse that you turned away, do you?

THE WITNESS: No, I wouldn't. My memory is very poor.

THE COURT: Did you know the name of the vessel at the time?

THE WITNESS: Yes, I think I did at the time.

THE COURT: All right.

Anything else from Mr. Smith, gentlemen ?

MR. MALOOF: No further questions.

THE COURT: All right, sir, you are excused.

(Witness excused.)

MR. BOWLES: Your Honor, that is all the witnesse we have prepared for today.

THE COURT: Off the record.

MR. BOWLES: That's correct,your Honor. It is just that onthe one witness, Mr. Paulsen, I may not know until Monday precisely whether he can come in.

THE COURT: All right. You will do the best you can with Mr. Paulsen. And I'll permit you to reserve on motions on behalf of the claimants because I understand you have a live witness who could go forward right now.

MR. MALOOF: Yes, sir.

THE COURT: All right. Thenyou may call him, if you wish.

MR. MALOOF: We call Mr. Schnare.

K E N N E T H R A L P H S C H N A R E, called as a witness by the cargo claimants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MALOOF:

Q Mr. Schnare, would you tell the Court what you do for a living?

A I am a longshoreman. At the present time I am a foreman with Halterm, Ltd.

THE COURT: Whereabouts?

Q Where is that?

A In the Port of Halifax, Nova Scotia.

Q Are you a member of a longshoreman's union in that city?

A Yes, I am.

Q Which union is that?

A Local 269, Halifax Longshoremen.

Q Is that affiliated with the ILA?

A Yes, it is. It is a local.

Q How long have you been a member of that union

A 20 years.

Q What positions have you held in that union?

A I've been vice president, trustee, president, business agent and also -- I just can't think of the name right now. I am at the present time still an officer in the union, as an auditor.

THE COURT: You aer now the auditor?

A I am one of the auditors, yes. They have three.

Q Do you have any other positions which revolve about the maritime life of the Port of Halifax?

A Yes. I am a member of the Port Authority, Halifax Port Authority, and I'm also port commissioner.

Q What positions do you presently hold in the union, sir?

A I am an auditor.

Q Do you recall a period in 1971 when there was a strike on the East Coast of the United States of America?

A Yes, I do.

Q What position did you hold at that time in the union?

A I was a trustee and member of the negotiating team.

Q Were you an office man or an outdoor man?

A I was an outdoor man.

Q Did you work in and around the piers?

A I worked on loading and unloading of vessels, stowing of cargo in the ships.

Q Did you work for a stevedore company?

A Yes. I worked for Brown & Ryan as assistant foreman.

Q Do you recall, during the period of time you were with the union, whether there was a union policy concerning whether or not to discharge converted ships during a strike which was taking place at the time in the United States?

A Yes. We have always received a directive from New York, or suggestion, not to work any strikebound

ships from strikebound ports.

Q You always got that directive?

A That is standard procedure. Once there is a strike in the United States or in the river ports, an order comes through to uphold.

THE COURT: What river ports do you mean?

THE WITNESS: Port of Quebec, Three Rivers, Montreal, Toronto and Hamilton.

THE COURT: They have strikes when you don' have strikes in Halifax?

THE WITNESS: Yes. Their contracts run opposite to our ports. Each port is negotiated individually by the ports themselves.

Q You are with the union for 20 years?

A Yes, sir.

Q Can you remember a time when a request by any ship to have her cargo discharged was refused in the port of Halifax in the 20 years you were with the union?

A No, sir.

Q Even during the strikes?

A Even during the strikes.

Q And even with the directives?

A Even with the directives.

Q Does this include the time when there was a strike in Montreal?

A Yes.

Q Did Halifax discharge ships which came from Montreal?

A Yes, we did.

Q How many strikes on the United States East Coast would you say happened in the last 20 years?

A It would just be a guess. I'd say, since my time as a longshoreman, anywhere from eight to maybe ten.

THE COURT: It seems like more than that.

THE WITNESS: It could be quite possible that there is more than that.

THE COURT: Whatever there were, that's about it.

T1B

Q Can you account for the fact that you can't recall any ship being turned away from the Port of Halifax despite the conditions you've just told us about?

A As I said previously to my statement there, that I worked on and off of the ship. I handled the cargoes of all ships that was under our jurisdiction.

Maybe I had better explain to you that we have a hiring system that we go from one company to another. But we have parent gangs. This gang exists of 16 men.

Q A gang?

A A gang. And if our company has no work, then we are sent out to other companies. So we work the 10 miles of waterfront. We do all the ships in and out that port of all types.

Q You have testified, Mr. Schnare, that you can't recall any ship being turned away from Halifax even in the middle of a strike, where you had a directive not to --

A Not to my knowledge.

Q Can you explain that for the Court? Why would that be?

A Well, we had our first lockout in the history of the port, which was under my jurisdiction as president of the union, business agent, and the other ports worked

our cargo, they worked our ships. And this was just a standard thing, that if the ship was to do -- to come to New York, came into Halifax, we have to live.

We were only a seasonal port until the last few years, and then we became a year-round port when we comeinto containerization. So our limitation was from December until March or April, the river opened up April 15th, and from then we had nothing. We had a ship with two or three hundred ton a week.

Q When you were president of the union, did it concern you whether or not your members were working, making money?

A Yes, sir, it did.

Q And was it very important to you that they were working?

A Well, if they didn't work, then I had problems. The more work that they got, the less problems I had.

Q What is your understanding of what a manifest is?

A A manifest is the ship, how it is loaded. Every hold is loaded individual, what cargo is in it, what cargo is not in it, how many tons there is, where it is situated in the ship. It could be in the port wing, starboard wing, to deck, lower hold.

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Q Is it what we might call in the United States, if you can answer this question, a stowage plan?

A That's exactly what it is.

Q What is the Shipping Federation of Canada?

A The Shipping Federation of Canada is all the steamship companies that are in the Port of Halifax and all over Canada. They control the ships that are coming and going. They sublet to the stevedoring companies.

Now, there is in the Port of Halifax some members of the Shipping Federation that are stevedoring companies.

Q Are the agents in the Canadian ports members of the Shipping Federation of Canada?

A Yes, they are.

MR. BOWLES: Objection, your Honor.

THE COURT: What is the objection? If he knows?

MR. BOWLES: If he knows.

MR. MALOOF: If he doesn't know.

THE WITNESS: Yes, they are.

THE COURT: Do you know that of your own knowledge?

THE WITNESS: Yes, sir, I do.

THE COURT: All of them are members?

THE WITNESS: Agents, not all stevedores. No stevedoring company is a member of the Shipping Federation of Canada unless he is an agent with it.

Q I think you've just testified that even though Montreal was on strike, the Halifax union would discharge ships coming from Montreal.

A Yes. We've done it.

Q And would that be true of ships which were strikebound in Montreal and then came to Halifax?

A Yes. It has happened.

Q Did Montreal do the same thing to Halifax?

A As recent as last year, as I told you, in November I was locked out for five weeks. There was a carboat went into Montreal and was off loaded, and this is common knowledge, printed in all papers, in the Quebec paper and in the Halifax paper, New Brunswick, and this is common knowledge.

They also have a clause in their contract that has been set up that they can't refuse to work. This is Canadian law. Once you sign a contract, under the Labor Code there is no strikes, no slowdowns or stoppage of work. This is in all contracts in Canada.

THE COURT: I've been waiting for somebody to bring that up all through this case.

All right.

Q Who with the union has a right to look at a ship's manifest?

A The president and the business agent and the assistant business agent, or any officer of the union which is on that ship if the business agent or assistant business agent cannot be reached.

THE COURT: What is the purpose of looking at it, of the business agent looking at the manifest?

THE WITNESS: In our contracts we have explosives, we have green hides. There is different commodities, and if there is any question of an explosive or certain chemicals that can hurt your eyes or hurt your skin, then fine, you must know this because it costs money. There is a clause, and it escalates, that X number of cents more per ton would be paid to the men.

THE COURT: So you are looking to see what kind of commodities there are?

THE WITNESS: Yes, it is a commodity thing. If, for instance, a ship come in that somebody said, "Okay, there's a ship diverted cargo," for instance we'll use that as a thing, as being president and business agent the first thing I would do is say, "Where is the manifest?", and demand it, because if you don't show it to

me --

THE COURT: To see what?

THE WITNESS: To see if it was diverted cargo.

THE COURT: And if it was diverted cargo, what would you do with respect to it?

THE WITNESS: Then we would have to look at the situation. But if it said "optional" or things like this here, then you are fine, we just go ahead.

Q If it says optional, you will discharge that ship?

A No problem.

THE COURT: I don't understand what he means by "if it says optional."

MR. MALOOF: Perhaps I can try to develop that, your Honor.

THE COUNT: All right.

Q If the manifest should give as the destination New York or Halifax, is that what you mean by optional, Mr. Schnare?

A Yes, it could be.

Q If it says New York, but, if New York is impossible, then the cargo will be discharged at Halifax, would that be an alternate port?

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A Yes, it could be.

Q Would you discharge then at Halifax?

A Yes, sir, we would.

THE COURT: Are you implying by your answers that if it merely said New York you would not discharge if there were then a strike in New York?

THE WITNESS: Well, your Honor, the manifest would be shown to me. In advance of that the company would get in touch with me and say, "I have a ship coming that is optional."

THE COURT: Suppose he tells you, "I have a ship coming with a manifest that says New York." I am talking about 1971 now.

THE WITNESS: That's right. Then there would be some question on it.

THE COURT: All right. What is the question and how do you resolve it?

THE WITNESS: I've never run against it, to be truthful with you. It has either been -- the question would be this way: when an employer calls you, he tells you, "I've got a ship coming in," and they make sure it is "optional."

I read a good many manifests that have come in, and the manifest is "optional."

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THE COURT: Are you implying to me that when he gets there he does something to the manifest?

THE WITNESS: No, sir. Before he gets there.

THE COURT: What does he do?

THE WITNESS: Your Honor, let's be fair in this here, and I'm telling you the truth. You got a piece of paper that is drawn up in a manifest of a ship. You could wire ahead, and in Lloyds of London everything is made out, ships from stem to stern. There's no problem to have that drawn up. And when you arrive in port, it might arrive at 12 o'clock at night, the next morning you must produce that there for the stevedoring company, and he's got to know where the cargo is. If he hasn't got that plan of that ship, he doesn't know what to take out. So it is just a photostatic copy.

Q Mr. Schnare, Mr. Quinn testified yesterday that if a ship doesn't touch a strikebound port, why, even though New York would be the destination and New York was on strike, Halifax would discharge that ship. Would you agree with that?

A Partially. My estimation of -- how I say this, strikebound port -- let's use the word hot cargo. For instance, if that ship is either in the port or is sent to that port, then fine, to me that is hot cargo, and this

is my opinion.

Q Even though it doesn't go into the strike-bound port?

A Even though it doesn't go into the striking port.

Q Would Halifax discharge that ship?

A Yes, sir. We have.

THE COURT: Only if the manifest were presented to you which purported to tell you that Halifax was a permitted alternate port of destination, is that the fact?

THE WITNESS: I don't quite understand you, sir.

THE COURT: Well, all right. Perhaps I don't understand your prior testimony. I'll permit the inquiry to proceed.

Q And Mr. Quinn also said that if the Halifax union knew that the ship had partially discharged at a strikebound port, if they knew, if somebody told them, then they wouldn't discharge the ship. Do you agree with that?

A Yes, I do. That wouldn't be classed -- in my estimation and my knowledge, that would be classed as a runaway ship.

Q That's a different one.

A This is a different situation. This is classed as a runaway ship.

THE COURT: Would you tell us precisely what you mean by a runaway ship?

THE WITNESS: If it has been in and has been worked and let herself go and run away from the port.

THE COURT: After the strike began?

THE WITNESS: After the strike, if she has been in the strikebound port for X number of days. But, again, if I had no knowledge of that, then, fine, I wouldn't be any the wiser. It would be off loaded if it said "Halifax, alternate port."

Q If you didn't know about it, you would discharge the ship.

A I think I made a statement before that we haven't turned down a ship away yet, to my knowledge.

Q In 20 years.

A To my knowledge.

Q You've been a member of the union for 20 years.

A Yes, sir. I've been a working member for 20 years.

THE COURT: Suppose you found out half-way through your off loading, or you had the vessel half-discharged and you found out she was a runaway. What would

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you do? Suppose some nasty fellow from Brooklyn called you up and told you.

THE WITNESS: I wouldn't know, sir. There would have to be a decision made at that time. Then we would have to bring in the executive to make this decision along with the business agent and the assistant business agent. But it has never happened.

Q Might you have a meeting of the union members to discuss that?

A If and when the executive -- you bring it to the executive first and then to the general buyer. If the executive said, "Carry on," then I would have to do their bid.

Q Is there a difference between the type of wage paid to a union member in Montreal and the type of wage paid to a union member paid to Halifax?

A Oh, yes.

Q Please tell us what it is.

A In the Port of Halifax we are guaranteed nothi If we work, we work. If we don't work, we don't get paid. In the Port of Montreal, Three Rivers and Quebec, they are guaranteed a wage, and I think that's been in effect since 1967.

Q Whether they work or not?

A If they work or not, they are guaranteed for 36 weeks of the year, 40 hours. The only other port that is not guaranteed is the Port of St. John.

Q Mr. Schnare, I want you to assume that the Singapore Trader was a C-2 vessel. Do you know what a C-2 is?

A Yes, I have a good idea.

Q 441 feet long, with a draft forward of 7 feet and a draft astern of 21 feet, 8600 gross tons, carrying approximately 8000 tons of cargo, cubic, and 1400 tons measurement.

Will you tell the Court, if you know, the ports between New York and Montreal, including Montreal, where that ship physically -- I'm talking about the facilities of the port -- could have discharged?

THE COURT: In October, 1971.

MR. MALOOF: Yes, October, 1971.

MR. BOWLES: Excuse me. Is this clear that this is entirely apart from a strike or something else?

THE COURT: Well, you'll come to strikes.

MR. MALOOF: Physically.

THE COURT: He is talking about what port facilities exist.

Q You may limit your answer to ports which have

covered sheds, which have railroad connections and truck highways.

A There is one thing I would like to make clear first. You said 7 feet?

Q The draft forward is 7 feet.

A The draft. That would be in fathoms?

THE COURT: Feet.

Q 7 feet, not fathoms.

THE COURT: She is very light forward, this particular vessel.

A From New York you would have Halifax; St. John; Sidney, Nova Scotia. They could handle that in St. Johns, Newfoundland.

Q That is different from St. John, isn't it?

A That is different from St. John. This is St. Johns, Newfoundland, which is the island in Newfoundla Then Port Ilford; Levis, Quebec. That is directly across the harbor from Quebec City. There is also Three Rive and the Port of Montreal.

Q How about Quebec City?

A I mentioned Quebec City.

Q I'm sorry, if you have. Is the Port of Levi an ILA port?

A No, sir, it is not.

Q How about the Port of Sidney, Nova Scotia?

A It is not either. It is CNR.

Q Those ports have covered sheds?

A Yes, they have.

Q They have railroad connections?

A Yes, sir.

Q Canadian National Railway?

A CNR.

Q Highways

Q Truck connections to the rest of the world?

A Right.

MR. MALOOF: Just one moment, your Honor.

(Pause.)

MR. MALOOF: No further questions.

THE COURT: Mr. Bowles?

CROSS EXAMINATION

BY MR. BOWLES:

Q Mr. Schnare, during October, 1971, you worked on the docks,didn't you, in Halifax?

A Yes, sir. I was also a negotiating contractor at that time.

Q During that time you never got to any of these ports that you just mentioned, did you?

A I beg your pardon?

Q You just mentioned a group of ports for Mr. Maloof where they might have certain facilities to discharge cargo. You didn't actually go to any of those ports in October, 1971, did you?

A Notactually in October.

Q That's what we are talking about, 1971. You didn't go there, did you?

A Just wait a minute now. Let me answer your question. You asked me if I went there in October. Not especially in October. But prior to October I was in Cape Breton. As a matter of fact, in October I was in Cape Breton hunting. In August of that year I was in -- .

Q Excuse me. Would you please limit yourself to October?

THE COURT: He just asked you about October.

Q All I would like to know is October, your movements in October.

A It is a small time, 30 days.

Q Okay. Agreed.

Mr. Schnare, how long were you actually an officer of the union as opposed to a working member?

A Would you rephrase that? I just don't quite understand you.

THE COURT: How many of your 20 years have you

been a union officer?

Q You were a vice-president how long, sir?

A Two years.

Q And president how long?

A 25 months, plus business agent with that 25 months.

Q So that 16 years you were basically working on the docks?

A Oh, no. All but two years I've worked on the docks.

Q I see. How long were you working in the office, then?

A 25 months.

Q Just the time you were the president?

A That's right.

Q I see. I think your testimony is probably fairly clear on your direct, but let me put it to you in a direct question, Mr. Schnare.

Q If when you were the president of the union you were told by a local ship agent or stevedore -- or requested, excuse me -- to your office that he has a ship, the Singapore Trader, in the Port of New York and she has been shut down by an ILA strike in New York, and he asked you a direct question would you or would you not

discharge that ship, wouldn't your answer be no, you would not discharge that ship?

A It is quite possible.

Q Isn't that --

THE COURT: Give him all the assumptions. Why don't you start right at the beginning. Give the gentleman the proper assumptions to make, that this vessel was --

MT. BOWLES: I am sorry. I thought we had had some of that on the record.

Q But, Mr. Schnare, we are talking about the Singapore Trader, a ship that loaded cargo in Hong Kong bound for New York. She actually arrived in New York and discharged approximately 20 per cent of her cargo when she was shut down by the ILA strike at midnight on September 3 1971. And then the next couple of days after that, if you were the president of the union at that time and you had received a request from someone, for example a stevedore or a ship agent in Halifax, and they asked you that, would you discharge this ship -- you called it a runaway ship before, didn't you?

A That's right.

Q -- would you discharge that ship or not, your answer would have been no at that time, wouldn't it?

A If I knew it was a runaway ship, no.

Q Your answer would be that you would not discharge the ship?

A I would not discharge that ship.

MR. BOWLES: No further questions.

I would also move at this time to dismiss the claim of unreasonable deviation.

THE COURT: Decision reserved.

Any further questions?

MR. MALOOF: No further questions.

BY THE COURT:

Q Do I understand, when you are dealing with these requests, which I understand are made to you, not to deal with cargo from ships destined for strikebound ports which have come directly to Halifax instead, that you must be presented with a manifest that says on it that Halifax is an alternate port?

A Yes.

Q And do I understand that they have some kind of a common practice of fabricating or forging or making up that kind of a paper to show to you?

A That's true.

Q That's what the shipping companies are doing?

A Maybe I am disclosing secrets, but in my

experience as the walking boss or as a foreman I've always been handed a manifest. If it is a loading or discharging paper --

Q And you've never actually found out that that was false or fabricated; nobody has ever actually told you that this was a hot ship or a runaway ship or anything like that?

A No. Let's use Brown & Reilly as a stevedoring company. They have five gangs. They have three walking bosses. Each walking boss -- a walking boss would be issued a ship's plan. In turn there would be one to every foreman. This would show -- using the hog boats, for instance, something I've always wanted to see was a complete hog boat dumped, see how many sheds it would take up in the Port of Halifax.

So the plan would be given to you. Probably in the top deck it would read "Halifax 100 tons of rubber. So automatically you would know as a foreman you go to the after end, rig your ship for the after end, and dump your 100 ton of cargo.

You might go down in the lower hold, and right in the square there may be 50 ton of general cargo. There you must know as a foreman. Otherwise you are stealing from the companies in the sense that you would

be standing around maybe for half an hour or an hour not knowing where to go.

So it is a set-up that is given to us that we must know what we are doing and where we are working, that we don't off load, let's say, Philadelphia cargo or Chicago cargo when it is not necessary. Otherwise you will be taking out whatever you come to.

THE COURT: So you wouldn't work a ship while there was a strike in an East Coast port unless you had such a document which said "Halifax" on it?

THE WITNESS: No, not necessarily. They would hand me the manifest to take out your own cargo first, you're going to remove the New York cargo. So your question at that time is, "Is this cargo coming out? Yes." You follow the company's plan. Your superior will tell you, "Take it out." Who are you? You call your union official. He would come down and check the manifest. The manifest is "optional."

THE COURT: So you would have to be shown a manifest that was optional Halifax.

THE WITNESS: Yes.

THE COURT: All right.

MR. MALOOF: And when you say "manifest," you are talking about a document which we call here a stowage plan.

THE WITNESS: That's right. The only time we cal it a stowage plan is when we are stowing the ship ourselves the ship is coming in to be stowed. Using the West Indies Trader as a point, say a ship will come in, we will load th ship from the bottom to the top and we draw a stowage plan.

The other time is when it is given to us off of the manifest as a manifest, again as a stowage plan of how the cargo was stowed.

THE COURT: If it was all general cargo, all destined for Halifax, do you need a stowage plan?

THE WITNESS: Oh, yes. You must know who is --

THE COURT: If it all comes out at Halifax?

THE WITNESS: Can you visualize taking a ship tha is holding eight thousand ton of cargo, commodities of rubb tea, zinc, tin, and, okay, going into Halifax, and if you dump that all off, what kind of a mess you would have? Ca you visualize that?

THE COURT: All right.

MR. MALOOF: Only one other thing, your Honor. Mr. Bowles made a motion --

THE COURT: Does anyone else have any further questions?

THE COURT: He is the president of some company.

MR. BOWLES: Why the mystery?

THE COURT: Why the mystery?

MR. MALOOF: Mr. Milton is the president of the Valley Field Dock & Terminal Company.

THE COURT: Let's come to you, Mr. Hayden.

MR. HAYDEN: I will have two witnesses. One will be a rebuttal witness, one will be an expert.

THE COURT: Can you get any of them in?

MR. HAYDEN: The rebuttal witness is here now. His testimony will take no more than ten minutes. I will be happy to go ahead with him. I would not desire to go ahead without the expert having testified on behalf of Mr. Bowles prior to my expert.

THE COURT: You can't go with him right now?

MR. HAYDEN: The expert I would rather not go on until they are finished but I will put the rebuttal witness on now.

THE COURT: I will take him out of order in just a minute.

I want to address myself to the other open question we have here. The question of Mr. Herlihy about the date of mailing the number.

I am not preventing anybody from making the fullest possible record they can here. It seems to me that the net practical effect of the notice is not very different if he mailed 125 or 250. It's the order of magnitude that we are talking about. We are talking about a substantially large number. If a man estimates 250 and the ultimate proof were even half of htat, I don't think the legal effect would be any different.

MR. MALOOF: I don't think so, but it might be 50, your Honor.

THE COURT: Let me carry it one step further.

He has given a date in his deposition. He moved it up a date on the trial. I think that you ought to be perfectly satisfied with the record as it is on that score. I am not saying you can't recall him. I want everybody to go away feeling he has made a full trial record but I don't see too much significance.

MR. MALOOF: If your Honor is satisfied, I am.

THE COURT: I don't want to commit myself. You can't try a case until it's tried.

MR. MALOOF: May I just then at least -- I will drop that. Mr. Bowles has stated he will bring

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Mr. Herlihy in.

MR. BOWLES: I didn't say I will. I am considering it.

THE COURT: You ought to let him know so he knows whether he will have to call him.

MR. BOWLES: Can we do that after we take Mr. Paulson's deposition?

THE COURT: Yes, but I can't carry this matter indefinitely.

MR. BOWLES: On this notice question, there was testimony notices were mailed out by Mr. Herlihy's office or him to all the notified parties on the bills of lading. Is Mr. Maloof suggesting he didn't get these?

THE COURT: He is suggesting there is a difference in date mailed as testified to on a deposition and the date mailed as testified on a trial. The Court called your attention to the fact that the notice speaks of a fait accompli. The notice says she has sailed and will arrive such and such a date, as I remember the exhibit. By the time it was mailed, it was mailed.

MR. MALOOF: I think equally important, your Honor, is the effect on the witness' credibility.

rkr

MR. BOWLES: The one day he was talking about was a Sunday. If he inadvertently mentioned a date of a Sunday on his deposition, I don't think it should be fatal to his credibility.

THE COURT: Don't you think the Court would be just in finding whether this notice in fact reached the notified parties much less the consignees, but when it reached the notified parties, the Singapore Trader had already had left New York.

MR. BOWLES: That is clear.

THE COURT: I would think that is clear. It was too late for them to come back and say, "Hey, fella, don't do anything unreasonable, we want it discharged at Halifax." Isn't that what we are talking about?

MR. BOWLES: I concede that point but the results that should flow from that point may not have been put before the Court prior to this time and I would refer your Honor to the adjudicated case of Farr v. Hann Steamship Company Limited, a decision by Learned Hand in 1941 and there was a question --

THE COURT: I would just as soon not hear the argument on this. I assume the only reason Mr. Maloof wants to recall the witness as to pin down the

precise number of notices sent and the precise date of mailing, but the real point is, the notices were received at the very least after the vessel had left New York.

MR. BOWLES: Conceded, your Honor.

THE COURT: That is the end of that story, isn't it?

MR. BOWLES: No. May I refer you to page 944 of this decision, the next to last page. In that caes the ship did deviate in the classic sense of going to an unscheduled port. The prior cargo interests -- the ship had loaded at two other ports and the interests at the two other ports learned of the deviation to the third port. I guess the ship had room for additional cargo. They learned of the deviation after the ship was in the third port actually commencing loading cargo. They didn't do anything. They didn't preserve their rights or make any protest to the shipowner and Judge Learned Hand said here in discussing this set of facts, the righthand column page 944, "But if he learns of a deviation while the voyage is in progress and without protest, allows good to make good her faults" -- and he goes on to discuss this and they rejected the claim of deviation because the cargo

interests did nothing. They made no protest or preservation of their rights at any time while the deviation was in progrrss.

THE COURT: You can't try the case in segments. What we must do is make a factual record. If either counsel are not satisfied with the factual record surrounding this notice, you are free, either one of you to recall Mr. Herlihy on this score. Don't ask me to decide the case in segments.

MR. MALOOF: I don't know if it says what Mr. Bowles says it says. I do know there are more recent cases that say the opposite.

THE COURT: All I suggest to you, the evidence would seem to indicate that the notified parties received the notice after the Singapore Trader had left Brooklyn.

MR. BOWLES: The implication is, there is no protest or preservation of their rights. Mr. Maloof, if he has proof on that issue, should bring it in. I am calling his attention to it.

THE COURT: All right, his attention has been called to it. What was the date of the stranding?

MR. BOWLES: October 15, 1971.

One additional point on housekeeping. I had

Did you want to be heard?

MR. HAYDEN: I did want to point out that Mr. Herlihy said he didn't consider it so it's irrelevant.

THE COURT: If he had gone to Richmond, that would have been a deviation.

MR. BOWLES: It depends upon the circumstances.

THE COURT: It depends on the circumstances whether it would be reasonable or unreasonable.

MR. BOWLES: I don't agree with that. Depending upon the bill of lading and all the other circumstances, if they got down to the point that they needed a port to get the vessel into --

THE COURT: It's a question of whether it's reasonable or unreasonable. Anyplace other than New York would be a deviation.

MR. BOWLES: Not necessarily, your Honor. We discussed this at the beginning. Under the terms of the bill of lading --

THE COURT: The stuff on the back?

MR. BOWLES: Yes.

THE COURT: I think I ought to complete the trial record here and let him give me the controlling depths for Richmond but I don't think it's relevant at

PLAINTIFFS EXHIBIT 34

EXAMINATION

BY MR. BOWLES :

Q. Is that on Des Voeux Road ?

A. Yes, that is French - Des Voeux Road, Central.

Q. How old are you, Sir ?

A. 59.

Q. In August 1971, by whom were you employed ?

A. China Marine Investment Company Limited - Managing Director.

Q. Did you have any connection at that time with the "SINGAPORE TRADER" which is the subject of this litigation ?

A. Yes.

Q. What connection did you have ?

A. I am shareholder for Singapore Navigation Co., S.A. ; also President of Singapore Navigation Co., S.A.

Q. Was there any relationship - business-wise - between China Marine Investment Co.,Ltd. and the "SINGAPORE TRADER"?

A. Yes.

Q. What was the relationship ?

A. China Marine is Managers for vessel in Hong Kong.

EXAMINATION

BY MR. BOWLES :

Q. What company is China Overseas Navigation Company ?

A. This is a shipping company in Taipei.

Q. What relationship did they have with the "SINGAPORE TRADER" ?

A. They are Managers for "SINGAPORE TRADER" for liner business.

Q. How long have you been with shipping business personally ?

A When I was 20, that means 1935.

Q. How long have you been employed by China Marine Investment Co. ?

A. Since 1935 - February.

Q. Prior to becoming employed by China Investment Co., by whom were you employed ?

A. By Wah Shang Steamship Co.,Ltd., Shanghai.

Q. When was the Singapore Navigation Co. formed ?

A. In June 1971.

Q. What was the relationship between Singapore Navigation Co. and the "SINGAPORE TRADER" ?

A. Singapore Navigation Co. owns "SINGAPORE TRADER".

MR. BOWLES :

A. Just like all the repairs as per N EXHIBIT 7.

Q. Has the Master or the Chief Engineer requested any repairs at that time that were not carried out ?

A. No.

Q. Where was the "SINGAPORE TRADER" berthed or anchored while loading cargo ?

A. At the buoy.

Q. And how was the cargo delivered to the "SINGAPORE TRADER " ?

A. By barges.

Q. Were any storms experienced during loading period ?

A. Yes.

Q. Do you recall any particular one ?

A. Yes, the severe Typhoon Rose.

Q. Did that delay the loading of the cargo or not ?

A. Yes.

Q. Why is that ?

A. Because no lighters could come out to the ship's side and there were storms in the harbour.

MR. BOWLES :

Q. Do you recall on what day Typhoon Rose occurred ?

A. I have to refer to the telexes.

MR. MALOOF : In what file is he looking ?

MR. BOWLES : (Let the record show that Mr. Lin is looking at a group of telexes marked at the deposition of Mr. Herlihy).

A. Typhoon Rose - on 16th August 1971.

Q. And when was the loading recommenced after Typhoon Rose ?

A. It was on the third day - 18th August 1971.

Q. While the ship was loading cargo did you have occasion to visit the ship ?

A. Yes.

Q. On what occasions do you recall ?

A. I always drop by to the ship's side in the afternoons to see, to check out whether loading is going on.

Q. What conditions did you find when you visited the ship ?

A. Very normal.

MR. BOWLES :

Q. Did you have occasion to observe loading procedures, including the use of dunnage ?

MR. HAYDEN : Objection to the form of the question as leading the witness.

MR. BOWLES :

You may answer the question .

A. Yes.

Q. What conditions did you observe ?

A. In quite normal situation - that the dunnage was supplied by stevedores.

Q. When did the "SINGAPORE TRADER" leave Hong Kong ?

A. May I refer to the file ?

MR. HAYDEN : Q. Which file would you like Mr. Lin ?

A. Mr. Herlihy's.

Q. Is that the file of telexes ?

A. Yes.

(File was produced for Mr. Lin's reference to it)

A. "SINGAPORE TRADER" sailed..departed Hong Kong on the 22nd August 1971, 1819 hours, as per Master's radio to Gannet, New York.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. BOWLES :

Q. After leaving Hong Kong where was the "SINGAPORE TRADER" bound ?

A. For Balboa, Panama, then New York.

Q. Mr. Lin, I refer your attention to a copy of a bill of lading previously identified at Captain Yang's deposition as the form of bill of lading used on the "SINGAPORE TRADER" on this voyage.

A. Yes ?

Q. And in particular I refer you to a "stamp" on the lower right-hand corner which states : "All U.S.A. cargo will be discharged at the nearest non-U.S. port(s) in event of the longshoremen strike in the U.S. East Coast continues and cargo from such discharging port(s) to bill of lading destinations are at the cost and risk of cargo".
Was this "stamp" placed on all original copies of the bills of lading issued to the shippers ?

A. Yes.

Q. Did any of the shippers object to accepting bills of lading with this "stamp" thereon ?

A. No.

MR. BOWLES :

Q. What was the purpose of putting the "stamp" on the bills of lading ?

MR. MALOOF : Objection. The "stamp" is so clear and the purpose is so obvious that the question must have an illegal ulterior motive.

MR. BOWLES : I object to Mr. Maloof's comment. Highly improper objection.

MR. BOWLES :

Mr. Lin, you may answer the question.

A. Because, at that time there was strike at U.S. West Coast and all shippers not on my Company but other liner company accepts such "chop" (stamp).

Q. Did you expect there was a possibility of a strike on the East Coast also ?

A. No, because I was constantly guided by my New York agents, Gannet that there would be possibility to avert the strike at East Coast.

Q. Mr. Lin, while the "SINGAPORE TRADER" was en-route from Hong Kong to New York, did you or your Company receive any reports from the Master of the vessel ?

MR. BOWLES :

MR. MALOOF : Objection. Mr. Lin telling long stories instead of answering "Yes" or "No".

Q. From whom did you receive these reports ?

A. Gannet and Mr. Anthony Shen, my New York representative.

Q. On about October 1st, 1971 did you receive any reports concerning a strike commencing on the East Coast of the U.S. ?

A. Yes.

Q. What reports did you receive and from whom ?

A. From Gannet, stating that strike has commenced.

Q. What, if anything, did you do at that time ?

A. Then we discussed three possibilities.

Q. Who did you discuss this with ?

A. Mr. Herlihy of Gannet over 'phone.

Q. What were the three alternatives you just mentioned ?

A. 1. To stay at Port of New York, to wait for the strike to go over ;

2. To look for any nearby Canadian Ports to complete the discharge ;

3. Any other possible nearby ports where the vessel could be ensured of no labour problem.

MR. BOWLES :

Q. What decision was ultimately made with respect to the "SINGAPORE TRADER" concerning the three alternatives ?

A. On subsequent days, Gannet advised the strike will continue without knowing when it will be ended, therefore number one alternative is to be stricken out. So we discussed on the second and third alternatives. After several days of discussions and investigations made by Gannet-side, it was decided on 6th October 1971 that the ship will go to Detroit for discharge where there is no labour problem.

Q. Did Mr. Herlihy give you any advice as to the best possibility of the "SINGAPORE TRADER" discharging at any Canadian Ports ?

A. He has given me the possibilities of sending a vessel to Canadian Ports but without any assurance that the Canadian Ports might take the ship or not.

Q. Did Mr. Herlihy send you a telex on this subject ?

(Witness requested sight of telex. This was produced)

Can I refer to the telex ?

(after studying the document)

MR. BOWLES :

A. Yes, this is the information.

(Witness is referring to a telex dated October 6 1971, previously marked "Claimant's EX. 1 FOR ID at the deposition of Mr. Herliny).

Q. Did you receive this telex from Gannet ?

A. Yes.

MR. BOWLES - I like to read two paragraphs of the telex into the record.

MR. HAYDEN : I object to your reading any document into the record - document speaks for itself.

MR. BOWLES : Agreed, but sometimes it helps to have portions of a document conveniently in the record.

(Reporter is asked to quote the two paragraphs as requested by Mr. Bowles, which are appended below :-

QUOTE: CONSEQUENTLY, WE HAVE LOOKED FOR BEST ALTERNATE PORT AND HAVE GOT A FIRM COMMITMENT FROM DETROIT HARBOUR TERMINAL, DETROIT, MICHIGAN. WE RECOMMEND YOU ACCEPT AND ASSURE YOU THAT WE WOULD TAKE THIS STEP IF VSL WAS OUR OWN, ALSO GIVE SAME RECOMMENDATION TO ANY OTHER

(Excerpt of a telex received from Gannet - cont'd.)

QUOTE: OF OUR PRINCIPALS IN SAME SITUATION. INSOFAR AS CAN. PORTS ARE CONCERNED, OUR AGENTS HAVE ADVISED AGAIN THAT ANY SUITABLE PORT SUCH AS ST. JOHN, HALIFAX, MONTREAL, WILL NOT ACCEPT THE VSL A/C UNION PROBLEMS. OTHER SMALLER CANADIAN PORTS WHO DON'T HAVE UNION PROBLEMS ARE HOPELESSLY INADEQUATE IN WAREHOUSE SPACE, TRANSIT FACILITIES, ETC. UNQUOTE.

MR. MALOOF requests for the whole telex also to be recorded, and this is as under :-

WUINY 11118 1849
GANNET 66380
7803321
HX 3321 CONVAVCO

GANNET 10/6/71
CHINA MARINE
HONG KONG

RE SINGAPORE TRADER

PRES. NIXON HAS INVOLVED TAFT-HARTLEY ACT INJUNCTION ONLY AGAINST WEST COAST PORTS. WE FEAR THIS ACTION WILL MEAN INDEFINITE PROLONGED STOPPAGE AT N.Y. WHILE ALWAYS POSSIBLE THEY MIGHT SETTLE,OUR BEST JUDGMENT IN LIGHT OF PRESENT FACTS, IS THAT THEY WILL NOT.

(Still quoting the whole of telex as per Mr. Maloof's request)

CONSEQUENTLY, WE HAVE LOOKED FOR BEST ALTERNATE PORT AND HAVE GOT A FIRM COMMITMENT FROM DETROIT HARBOUR TERMINAL, DETROIT, MICHIGAN. WE RECOMMEND YOU ACCEPT AND ASSURE YOU THAT WE WOULD TAKE THIS STEP IF VSH WAS OUR OWN, ALSO GIVE SAME RECOMMENDATION TO ANY OTHER OF OUR PRINCIPALS IN SAME SITUATION.

INSOFAR AS CAN.PORTS ARE CONCERNED, OUR AGENTS HAVE ADVISED AGAIN THAT ANY SUITABLE PORT SUCH AS ST. JOHN, HALIFAX, MONTREAL, WILL NOT ACCEPT THE VSL A/C UNION PROBLEMS. OTHER SMALLER CANADIAN PORTS WHO DON'T HAVE UNION PROBLEMS ARE HOPELESSLY INADEQUATE IN WAREHOUSE SPACE, TRANSIT FACILITIES, ETC.

GT. LAKES PORTS, CLEAVELAND, DETROIT, ETC. DO NOT HAVE I.L.A. LABOUR, AND DETROIT CAN ACCEPT VSL. OTHER PORTS ARE OVERCROWDED AND REFUSED.

THERE WILL BE A SAVING ON STEVEDORING ABOUT 5.00 PER MSMT TON, DETROIT STEVEDORE QUOTING DLRS. 12.95 ALL PURPOSES AGAINST NY RATE 18.00. WE ARE STILL TRYING ACCURATELY ESTIMATE HOW MUCH DISCHARGED AT NY, BUT OUR GUESS AT LEAST 8000 TONS (IF NOT MORE) REMAINING.

THIS SAVING OF ABT 4000 DLRS WILL BE OFF-SET BY COST OF SEAWAY TOLLS,FITTINGS, ETC WHICH WE EST ABT 11000 DLRS. WE BELV NET RESULT WILL BE TO YOUR BENEFIT FINANCIALLY. WE HV EXPLAINED SITUATION TO MR STIFF AND MR. SHEN, WHO BOTH AGREE BEST PROCEDURE.

A/C NECESSITY TO MAKE CUSTOMS CLEARANCES ETC WE MUST HAVE YOUR DECISION WITHOUT FAIL TOMOW MORNING, ORDER TO COMPLETE PREP AND SAIL TOMOW EVENING. IT IS NEC MAKE EARLIEST POSS ARRIVAL DETROIT AS THAT PORT IS INCREASINGLY CROWDED AND MUST ANSWER STEVEDORE AIRMAILING TOMOW.

MSG FROM CAP QUOTE
BUNKERS ROB 6TH 521
UNQUOTE

"Claimant's EX. 1
for ID
4/6/73
WEP"

2.15 p.m. (after lunch break)

MR. BOWLES :

Q. You ultimately made the decision that the "SINGAPORE TRADER" would go from New York to Detroit rather than any other place. Did the "SINGAPORE TRADER" ultimately proceed to Detroit ?

A. Yes.

Q. Do you recall on what day did the "SINGAPORE TRADER" leave for Detroit ?

A. About October 10th.

Q. Could you check the telexes to see if that has a date ?

A. Sailed October 8th, 1130 hours (after reference was made to a telex dated 9/10/71, marked "Claimant's EX. 4 FOR ID at Mr. Herlihy's deposition)

Q. Mr. Lin, on October 15 1971, the "SINGAPORE TRADER" ran aground on the St. Lawrence River, were you advised of that grounding and if so, by whom and when ?

A. I was advised by 'phone from Gannet-side

Q. Do you recall on what day ?

A. On the 15th October (referring to the said telex). On the date of the accident when Gannet learned the same thing from ship-side.

MR. HAYDEN :

A. This, I'm afraid I cannot reply to you, because these are routine works to be done by my subordinates.

Q. When you listed as shipper, that being China Marine Investment Co., did you prepare the bills of lading ?

(Witness : Now can I interrupt ?) .. and continues his explanation.

A. It is very simple. When we have "Freight Paid" we have the real shippers' name, and when we have "Freight Payable at Destination", we put our name in order to protect us for the collection of the freight.

Q. When you had "Freight Collect" bills of lading, do you deliver copies of those bills of lading to the shippers prior to the date on which the "SINGAPORE TRADER" sailed from Hong Kong ?

A. Bills of lading usually always handed to the shipper after the ships sailed, not before. We never borrow bills of lading to any shippers.

Q. Did you personally fly to the U.S. following the grounding of the "SINGAPORE TRADER" ?

A. No, I didn't.

MR. HAYDEN :

Q. Did you fly to the U. S. following the grounding of the "LIBERTY MANUFACTURER" ?

A. I didn't at that time, I was in San Francisco and I continued my journey back home without stopping at Los Angeles.

Q. Were China Marine Investment Co Ltd freight brokers in addition to ship operating company ?

A. She is managing company who manages the ships.

Q. What was the intended voyage of the "SINGAPORE TRADER" following discharge of the cargo scheduled to be discharged at New York ?

MR. BOWLES : At what point ? I think this should be clarified. Are you assuming ....

MR. HAYDEN : I will clarify. Was their cargo booked to be carried after the completion of the voyage on which the "SINGAPORE TRADER" grounded ?

MR. BOWLES : Again, I am going to have to ask for clarification. I think you are very imprecise.

MR. HAYDEN : After the "SINGAPORE TRADER" left Hong Kong, did you attempt to arrange for a charter of the vessel after its intended discharge in New York ?

MR. HAYDEN :

MR. BOWLES : Are you assuming that she would have completed the full discharge of the Hong Kong cargo at New York ?

MR. HAYDEN : I assume that when the vessel left Hong Kong it was intended by the vessel to deliver the cargo as scheduled.

MR. BOWLES : Yes, I think so.

MR. HAYDEN : You may answer, Mr. Lin

A. We have been in constant contact with Gannet on the future employment of the vessel, but Gannet side preferred to first have the vessel arrive, you see. Then it is very simple. Easy to book return cargo although he said market was a little bit dull.

Q. Mr. Lin, would it surprise you to learn that Gannet has indicated they were not attempting to arrange any return cargo, that it was your job and you were handling.

A. No, because they are more concerned than I am to get commission for outward cargo and I have Mr. Shen in New York, I can get cargo. But first they want the vessel arrive and then book the cargo around New York up to the Gulf.

MR. HAYDEN :

Q. Gulf of what ?

A. Gulf Ports - Houston and all that.

Q. Were you or anyone acting on the vessel's behalf negotiating for a cargo of newsprint ?

A. No.

MR. BOWLES : (interrupting) -

Just a minute, at what time ?

A. No, we never negotiated any newsprint in these Canadian Ports before the stranding, only after our decision to go to Detroit, you see.

Q. During your telephone discussions with Mr. Herlihy you have said you decided to send the "SINGAPORE TRADER" to Detroit, did Mr. Herlihy advise you that it would be cheaper or less expensive for you to send the vessel to Detroit than it would be to have the vessel discharge at Montreal or Montreal Ports ?

A. No, the only thing concerns me is safety for everybody and when I made the decision for Detroit-side, because this is a port where there was no labour problem. That's most important,if there is labour problem then I would not risk myself to send the ship there.

MR. HAYDEN :

Q. You were not advised that Detroit was cheaper than Montreal or any Canadian Ports ?

A. No.

(Session adjourned)

(6.00 P.M.)

BY MR. HAYDEN :

Q. Mr. Lin, I like to read to you a transcript from a deposition by Mr. Herlihy, and after I read it to you, I would ask you a question.
Now, in between the time the ship left New York and prior to the stranding, certain comments were made, werent't they, to pick up cargo on the way out of the Lakes at certain Canadian Ports ?

A. I believe I intended to load some newsprint.

Q. Were you part of those transactions ?

A. No. That was not booked through Gannet.

Q. Mr. Lin, were you aware that the Captain intended to load newsprint on the way out of the Lakes ?

MR. BOWLES : Just a minute - note my objection. I don't believe there was any testimony by the Captain that he intended to load anything anywhere.

MR. HAYDEN : I will withdraw the question.

Q. Did you agree with Mr. Herlihy that it was intended for the vessel to load newsprint on the way out of the Great Lakes ?

A. No. I only instructed Gannet after my decision to go to Detroit and after the ship's departure, I instructed Mr. Herlihy and Mr. Shen to find cargo back to Far East immaterial whether it was newsprint or other cargoes.

Q. Who has the cable address of CONAVCO ?

A. It is China Marine and China Overseas and New York Mr. Shen's cable address. I only use one word for abbreviation of the company.

Q. Was Mr. Shen at any time ever an officer of China Marine or China Overseas ?

A. No. In a certain capacity he is a representative of myself and all these companies of ships with loans from Bank of North America side.

Q. Where is Mr. Shen's office in New York which used the cable address CONAVCO ?

A. At 44th Street.

Q. Under what, what was the name of the office ?

A. No name, because he shares the office with his friend for electrical design or something like that.

MR. MALOOF :

(Mr. Bowles is directing Mr. Lin to complete his answer)

MR. MALOOF : Are you advising Mr. Lin that if he is asked another question right now he is not to answer it, because if you are, there is no sense in my wasting my time here.

MR. BOWLES : No.

(We will mark this area and come back to the question).

Q. Mr. Lin.

A. Yes, Sir.

Q. Do you remember the original estimated time that the ship was to leave Hong Kong ?

A. Yes, I do.

Q. What was that date ?

A. The ship should have left something around 17 August 1971.

Q. And what date did she really leave Hong Kong ?

A. She left (witness asks permission to refer to telex and permission granted) 22nd August, 1819 hours.

MR. MALOOF :

Q. Now you testified that part of the delay was due to a storm ?

A. Typhoon.

Q. Typhoon is a storm, isn't it ?

A. Bigger than a storm.

Q. Now, this storm lasted one day, Mr. Lin ?

A. Yes.

Q. But the delay was apparently five days, is that true ?

A. Yes.

Q. Yes or No ?

A. Yes.

Q. Now what was the delay in leaving Hong Kong ?

A. I will explain to you. When typhoon came, we had our observatory to raise up the flag. All the lighters stopped loading on Signal No. 5. If the actual typhoon came it would go up to 9, 10, 11. Signal 5 means that any time the wind will intensify, so all activities will stop at No. 5 signal. Sometimes the typhoon just passes by but didn't hit the island itself, so after 24 hours the flag lowered and everything resumed normally. Sometimes the typhoon stays about 100 miles outside without moving, so Hong Kong will be kept alert.

MR. MALOOF :

(Witness continues)

A. The typhoon came and passed by. So that the actual time of typhoon is only less than half a day. The severest portion of typhoon is only half a day but the time of waiting needs two days maybe, or three days, since the typhoon caused about one day's delay. That means Signal 5 hoisted about one day before. That means everything stopped. The lighters could not load cargo from the shippers. Therefore they could not come to the ship's side for discharge of the ship's holds. So automatically the lighters kept waiting in some shelter until the typhoon passed, then they come over for renewing discharging into ship's holds.

Q. Now ?

A. Yes.

Q. I repeat my question. What was the reason for the rest of the delay ? We have been talking about everything under the sun.

A. Now, the delay by the lighters about minimum three days, then after completing loading, ship sails. When the ship came to the harbour-side they found some irregularities in the pump, so they phoned to the office. I immediately sent down my Port Engineer and the repair had to be fixed up.

MR. MALOOF :

(Witness still continuing)

A. They worked day and a night, then the ship sailed...up to Panama Canal..

Q. You say that something happened at the Panama Canal ?

A. No. After the ship came up to New York they encountered a storm.

Q. Now let's get back to Hong Kong first.

A. Yes.

Q. Because of the irregularity in the pump the ship had to return to Hong Kong ?

A. No. When she left the anchorage then, something found wrong with the pump. Then I asked my Port Engineer to the ship's side to make good of the pump's irregularities.

Q. Mr. Lin, what irregularity and what pump were you talking about ?

A. You see the ship has been in port and had typhoon passed, so there must be some irregularity.

MR. MALOOF : Oh I see. Do you mean every time your ship encountered a typhoon it developed an irregularity in the pump ?

A. No.

KENNETH D. HONEGGER, VICE-PRESIDENT, COLLEY MOTORSHIPS LTD., MONTREAL, FOR PLAINTIFFS-APPELLANTS (PL. EX. 32)

On this twenty-third day of January in the year of Our Lord nineteen hundred and seventy-four, personally came and appeared

KENNETH DOUGLAS HONEGGER

who, having been duly sworn, doth depose and say as follows:

BY THE OFFICIAL COURT REPORTER:

Q What is your name, please?

A Kenneth Douglas Honegger.

Q Your occupation?

A Vice President of Colley Motorships Limited.

Q Your address?

A 137 Rowan Avenue, Beaconsfield.

Q Any apartment?

A No.

Q Your age?

A Forty-four (44).

EXAMINATION BY MR. LAWRENCE J. BOWLES:

Q Mr. Honegger, by whom are you employed?

A Colley Motorships Limited.

Q In what capacity?

A Vice President.

Q Did you have that position in the period of

HONEGGER:

September through November, 1971?

A Yes.

Q When did you become employed by Colley Motorships, approximately?

A December 1, 1958.

Q And in 1971, what were you duties with Colley Motorships? Generally?

A Just about everything. Just about everything connected with shipping.

Q What is Colley Motorships, and what do they do?

A We are ship agents and chartering brokers. We handle husbandry and general agency vessels in this area and the Great Lakes as well as doing a bit of chartering.

Q Do you know a Mr. Richard D. Herlihy of Gannett Freighting in New York?

A Yes, I do.

Q When did you first meet him, approximately?

A Probably, I can't be definite, but probably somewhere around 1965.

Q And have you dealt with him in a business

capacity between 1965 and 1971?

A Yes.

Q In connection with ships?

A Yes, in connection with ships and freight inquiries.

Q Mr. Honegger, in October 1971, were you aware that there was a strike on the east coast of the United States by the International Longshoremen's Association?

A Yes.

Q At about the time that strike commenced, can you tell us whether or not you received inquiries from shipowners or agents with respect to the possibility of bringing ships otherwise destined for United States ports into Canadian ports?

A Yes, we did.

Q Did you receive one inquiry or more than one?

A More than one.

Q Would you call that how many?

A No, I can't recall but just a number of them.

Q When did those inquiries commence coming into

your office, approximately?

A I would say probably in September of 1971, prior to the strike.

Q And in connection with those inquiries, what if anything did you do?

A Well, we checked all the various ports, I would say Eastern Canada and the St. Lawrence River, to find out if vessels could be handled if they were diverted from Eastern United States' ports.

Q What ports specifically did you make these inquiries at?

A Well, the east coast, Halifax, Nova Scotia, St. John, N.B., Quebec, Three Rivers, Montreal, Valleyfield, Cornwall.

Q And what were the results of your investigation?

A It didn't seem possible to discharge any diverted vessels at these ports.

Q Just to go back one step, who generally or what group, class of people did you contact in these various ports in your investigation?

A Agents, and harbour authorities, stevedoring

contractors.

Q Did you do this with one or more persons in each port?

A No, I would say probably one in each port, with the exception of Montreal, where, being located here, we could check with stevedoring contractors as well as harbour authorities.

Q I see.

On a prior question, you mentioned that you didn't think it would be possible to bring a diverted ship into Canada. Why is that?

A Well, we were told that the local ILA people would not handle cargo that was not manifested on Montreal or a Canadian specific port. That was one reason; the second being the guidelines that had been established by this cargo coordinating committee as to what you had to do with different types of cargo.

Q Mr. Honegger, I show you a group of documents -

(PASSAGE OFF THE RECORD)

BY MR. BOWLES:

HONEGGER:

Exhibit No. 7, what is the material enclosed with the Shipping Federation of Canada letter dated October 4, 1971?

BY MR. MALOOF:

Objection to the form. The document speaks for itself. We are not talking to the author of this document. He merely says it was received by his company.

BY MR. BOWLES:

Q What is that, Mr. Honegger?

A It is a circular letter from the Shipping Federation of Canada. Attached to it are four-page, a five-page item headed Marine Cargo Expediting Group. Do you want any more?

BY MR. BOWLES:

Yes.

Q What is the subject matter of that copy?

A What is to be the procedure or was to be the procedure in the event of congestion arising from extra vessels being routed into National Harbours Board ports.

Q And what priorities were given by this document

HONEGGER:

to the various vessels?

BY MR. MALOOF:

Objection to form to all this type of question.

BY MR. BOWLES:

Please answer.

BY THE WITNESS:

Well, it sets out here, No. 1, you have to give a certain E.T.A. -

BY MR. LOESBERG:

Excuse me - Is he reading now, telling us what the purpose is or does he know what the purpose is without - I don't know what he is talking about.

BY MR. MALOOF:

Mr. Bowles, the problem is that to be accurate he would have to read every one of these exhibits, you know. If you want to ask him -

BY MR. BOWLES:

Well, let us do it my way, please.

Q What are, what is the system of priorities established by this document?

HONEGGER:

A The system was that you had to report in ahead of time, sufficiently ahead of time, the E.T.A. of the vessel at the various ports. You had to declare what cargo was on the vessel. It set forth certain requirements, Canadian cargo was to receive priority as cargo destined for Canada. If U.S. cargo over-stowed Canadian cargo, the U.S. cargo might have to be reloaded on the vessel. Another priority was that if you were to discharge cargo that was not destined for a particular port, where the ship was discharging, then you had to have made prior arrangements as for the movement inland of this cargo or away from the wharves or piers prior to even discharging.

The vessels priorities were vessels that normally served Canadian ports on a regularly scheduled basis. That was first, then after that followed Canadian and U.S. cargo and then solely U.S. cargo.

Q Mr. Honegger, I show you a document previously marked as Claimant's Charlotte Exhibit No. 1 for

HONEGGER:

identification, a bill of lading for one parcel of cargo on the SINGAPORE TRADER. You will note on this document that the cargo was loaded at Hongkong and was to be discharged at the Port of New York, and it also contains a stamp on the lower right-hand corner concerning all U.S.A. cargo will be discharged at the nearest non-U.S. port in the event of a longshoremen's strike on the U.S. east coast.

Mr. Honegger, assuming a vessel such as the SINGAPORE TRADER attempted to come into one of the Canadian ports you have mentioned, with bills of lading in this form, do you have any opinion based on your experience as to whether the ship would have been discharged by the ILA?

BY MR. LOESBERG:

Objection.

BY MR. MALOOF:

Objection.

BY MR. LOESBERG:

You can't ask him that question.

BY MR. BOWLES:

I have asked him.

Q Please answer that question.

BY MR. MALOOF:

Nevertheless, you can ask any question you want, even though it be illegal, but we have a right to object to it; clearly improper, bad form, and I suggest that you know it, Mr.Bowles.

BY MR. LOESBERG:

And no foundation.

BY MR. MALOOF:

No foundation, but, however, if you wish to make this man an expert on all the ports in Canada, you may go ahead and do that but, of course, you will have to qualify him a bit further.

BY THE WITNESS:

I -

BY MR. BOWLES:

Q Can you answer that question, Mr. Honegger, can you answer that question, Mr. Honegger?

A I can answer as far as the Port of Montreal is concerned, where in my opinion the local ILA

would not have handled this cargo from the vessel.

Q You have testified previously that you had made inquiries concerning the possibility of bringing ships into these other ports. Did you - What did you understand the union situation to be in the other ports?

A The same, that they would not handle diverted cargo.

BY MR. LOESBERG:

Objection.

BY MR. MALOOF:

Objection.

BY MR. LOESBERG:

Hearsay without any foundation - I object to the form of the question.

BY MR. BOWLES:

Q In early October, 1971, did your office receive any inquiries from Mr. Herlihy of Gannett Freighting in New York regarding the bringing in of the SINCAPORE TRADER to any Canadian ports?

A I believe we did.

Q And what -

BY MR. MALOOF:

Objection to beliefs, wishes, opinions -

BY MR. LOESBERG:

And he says"we," he says"we" -

BY MR. BOWLES:

Well, I object to that last comment. It is highly improper. It is highly improper.

BY MR. MALOOF:

I move to strike the whole answer on the ground that it is a belief. This case will not be founded on beliefs or wishes, but on facts.

BY MR. LOESBERG:

Documents, memoranda.

BY MR. BOWLES:

Q Do you have a specific recollection of discussing the matter with Mr. Herlihy?

A I do not.

Q Had Mr. Herlihy, in fact, spoken to you? - concerning the bringing of the SINGAPORE TRADER to any of the Canadian ports with cargo, bills

of lading, with bills of lading such as are in front of you marked No. 1 for identification and based on the inquiries you have made at the other Canadian ports, and your knowledge of the situation in Montreal, what advice would you have given them?

BY MR. LOESBERG:

Objection.

BY MR. MALOOF:

Objection to what he would have done.

BY MR. LOESBERG:

Or what would have happened or what people would do. He said he/recalls no conversation with Mr. Herlihy.

BY MR. BOWLES:

Q Answer the question, please?

A I would have recommended against trying to discharge the vessel at any of the ports in question.

Q Why is that, sir?

A Well, if the ship was brought into one of the ports, and the first thing that had to be found out was whether the harbour authorities would

HONEGGER:

allocate space and whether the requirements of the coordinating could be met, and then to find out if the ILA would handle it. Now, if the ship did come in on the basis of the coordinating committee's recommendations or instructions, and would not be handled by the ILA, then we would fear that, or we did fear that the vessel could be classified as a hot ship and not be handled anywhere.

Q Now, you testified before you had a number of inquiries from other shipowners? Is that correct?

A That is correct.

Q What advice did you give them concerning the possibility of bringing their ships into Canadian ports?

A That if their cargo documents were made out with a Canadian port as a destination, we didn't anticipate any difficulties.

Q But suppose the ship had a document saying New York or a port on the east coast of the United States, what advice would you have given

them or did you give them?

A We told them that the ILA ports here would not handle the ship.

Q During the period of the strike, did you have any ships under your agency in the Port of Montreal?

A Yes.

Q What was your experience with the union, the ILA Union, in the port with respect to those ships? Can you tell us whether or not the unions demanded to examine the ships' documents?

A I know of two vessels, myself, where the union, the ILA, went down to our office on the wharf in Montreal and had a look at the cargo manifest of the vessel.

Q During the period of the strike, and particularly during the period in early October or through October, 1971, did you ever hear from anyone any statement concerning the position of the ILA local at Quebec as to whether it would or would not handle diverted ships?

HONEGGER:

BY MR. LOESBERG:

Objection to the form of the question. That is a statement out of the air.

BY MR. BOWLES:

Q Going back to the period of October 1971, did you make any inquiries or hear any statements concerning the position of the ILA - the ILA local at Quebec as to whether or not they would handle diverted ships?

BY MR. LOESBERG:

Objection to the form of the question.

BY MR. MALOOF:

Hearsay -

(PASSAGE OFF THE RECORD)

BY MR. BOWLES:

Let me re-phrase the question, now - With all the interference that we are having in getting this question out -

Q Mr. Honegger, going back to October 1971, what did you understand the position of the ILA local at Quebec to be with respect to whether or not it would discharge diverted ships?

HONEGGER:

A It was my understanding that they would not handle diverted ships.

Q Did you ever hear any statements by Mr. Walsh or any other union representative at the, of the local at Quebec, that they would defy the International Union and handle diverted ships, hot cargo or hot ships?

A No, I never heard anything.

Q Mr. Honegger, are you familiar with the surface transportation facilities, rail and truck, from Quebec to the United States, Montreal to the United States, or, say, from Detroit to other parts of the United States? Are you generally familiar with those facilities?

A Well, generally, as far as Montreal and Detroit is concerned, I am not too familiar with Quebec.

Q During the period of the strike, did you have more ships than normally calling at Canadian ports?

A Yes.

Q What were the conditions of the surface transport

HONEGGER:

facilities from Canadian ports, say, to the United States, as being available or relatively congested or more than usual or less than usual?

BY MR. LOESBERG:

Objection to the form of the question.

BY MR. MALOOF:

Unless he says he knew.

BY MR. LOESBERG:

With the box-cars and the freight tonnage and the - and the ton mileage, traffic mileage - You can ask him how much - qualify as to how much goes into a freight car.

(PASSAGE OFF THE RECORD)

BY MR. LOESBERG:

You brought the man in - I can say on the record that you say we are harassing you but he has certain documents in his file as the agent of somebody. Now, that is the all the man works for is the agent. Why are you trying to ask him about all different types of transportation which apparently he is not an

expert on?

BY MR. BOWLES:

Q Mr. Honegger, in your business with Colley Motorships, do your duties include routing freight through trucks and rail?

A They have, yes.

Q Are you generally familiar with the situation in the rail and truck lines at any particular time? For example, the strike in 1971?

A Well, generally and particularly, only as far as one specific type of movement was concerned.

Q I see. What is that?

A That was un-boxed automobiles.

Q I see.

Do your records show the approximate amount of cargo on board the SINGAPORE TRADER after she left New York?

A Approximately eight thousand, three hundred (8,300) tons, long tons.

Q After the SINGAPORE TRADER left New York in October, 1971, did you have any duties with respect to that vessel?

HONEGGER:

A Well, our firm were the port agents or husbandry agents at Montreal for the ship. We arranged for the - well -

Q What did you do?

A We arranged for the fitting of the necessary Seaway gear on the ship, and the clearing of customs, etc., and the passing of the ship by the Seaway Authorities so she could transit the system.

Q You mentioned that she had approximately, according to you, is that correct, she had approximately eighty-three hundred (8,300) tons of cargo on board?

BY MR. LOESBERG:

He said long tons.

BY MR. MALOOF:

Long tons, he said.

BY THE WITNESS:

Excuse me. I was wrong.

BY MR. MALOOF:

That is why we are here -

BY THE WITNESS:

HONEGGER:

You know, I was in error with the eighty-three hundred (8,300) tons. It is eight thousand, two hundred and seventy-five (8,275) payable tons measurement.

BY MR.BOWLES:

Q What is a payable ton measurement?

A It is normally forty (40) cubic feet or one cubic metre.

Q It would be a mathematical calculation, then, to determine how many cubic feet that entire cargo of just under eighty-three hundred (8,300) tons would require? Is that correct?

BY MR. LOESBERG:

Require where?

BY MR. BOWLES:

Or would include -

BY MR. LOESBERG:

Include in what?

BY MR. BOWLES:

The space, how much space it took up.

BY MR. LOESBERG:

Where?

BY MR. BOWLES:

Anywhere.

BY MR. LOESBERG:

If you have got a flat surface, you are dealing in square feet.

BY MR. BOWLES:

Well, number one, we are asking for the cubic feet -

BY MR. LOESBERG:

Where?

You my -

BY MR. BOWLES:

Do you understand what a cubic foot is?

BY MR. LOESBERG:

More than you do.

BY MR. BOWLES:

Q How many cubic feet would this cargo take up, then?

A It is difficult to say, but it was very light cargo, and I would say it stowed at a minimum of fifty (50) feet per long ton minimum.

Q Long ton?

HONEGGER:

A Per long ton. Now, I, I couldn't tell you how much it would - I am accepting from what I know of what the ship had on board, it was all light cargo.

Q Well, if we multiply the figure of the payable ton times forty (40) cubic feet, do we get the total cubic that this cargo would occupy?

A No, no.

Q No, I am sorry, what do we get?

A Well, it would require an average stowage factor, but - Can I refer to this?

Q Yes.

BY MR. LOESBERG:

Any other book you wish, there are books on that, before you give the answer.

BY THE WITNESS:

No, this is the message we received from Gannett Freight in New York before the vessel sailed, and it lists on here the cargo remaining on board, eight thousand, two hundred and seventy-five decimal eight five, zero (8,275.850) payable tons measurement, which would be forty

(40) cubic feet. Four thousand, six hundred and fifty-two (4,652) payable tons, long tons, two thousand, eight hundred and thirteen (2,813) payable tons, short tons.

BY MR. BOWLES:

Q Well, fromthose figures, can the cubic that this cargo would take up, can that be calculated?

A No,

Q Oh, I see, all right, all right, let me leave that point.

Do you know a Captain Ligdermot in Montreal?

A Yes, I do.

Q What was his capacity in October 1971, if you know?

A He was the harbour-master for the National Harbours Board.

Q Do the documents marked Honegger Exhibits 1 through 7 have Mr. Ligdermot's name on it?

A Some of them do.

Q I refer you particularly -

BY MR. MALOOF:

HONEGGER:

Objection to form, but I guess I should put it on the record, the document will speak for itself.

BY MR. BOWLES:

Q I am referring specifically to Honegger Exhibit No. 6, Honegger Exhibit No. 6.

Was Captain R.J. Ligdermot a member of the Marine Cargo Expediting Group?

A Yes.

Q In that capacity, of, in the Port of Montreal, do you know whether or not he would be the person to make any decisions concerning the priorities of ships coming into Montreal?

BY MR. LOESBERG:

Objection to the form of the question.

BY MR. MALOOF:

Objection. Apparently it was a committee that decided that, not one man.

BY MR. LOESBERG:

I object to the form of the question because he is asking about somebody else's duties.

BY MR. MALOOF:

There are all kinds of directives that would come down -

BY MR. BOWLES:

Q Can you answer the question?

A Yes.

Q What is the answer?

A "Yes".

Q Do you know who Captain Alexander Kerr is?

A Well, I know who he is, and at that time I believe he was the berthing master or berthing superintendent in the harbour-master's office in Montreal.

Q Would his position be under that of Captain Ligdermot?

A Yes, it would be.

(PASSAGE OFF THE RECORD)

BY MR. BOWLES:

I have no further questions at this time.

CROSS-EXAMINATION BY MR. DAVID L. MALOOF:

Q Mr. Honegger, did you say that you did or did not speak with Mr. Herlihy on the phone about the SINGAPORE TRADER coming into a Canadian port?

HONEGGER:

A I can't recall.

Q I see.

Would you look at that bill of lading which is marked Claimant's Cadotte No. 1, and read the stamp on the bottom?

(HANDING)

A "All U.S. cargo will be discharged at the nearest non-U.S.A. port in the event of the longshoremen's strike at the U.S. east coast continuance and cargo from such discharging ports to bill of lading destinations are at the cost and risk of cargo".

Q Are you able to understand what that stamp means?

A I think so.

Q What do you think it means?

A It means that if the cargo cannot be discharged at a strike-bound port, it will be discharged at a non-U.S. east coast port.

Q Where are the closest -

A Excuse me.

BY MR. BOWLES:

Let him finish the answer.

BY MR. MALOOF:

All right.

BY THE WITNESS:

And the cost of moving it from the place of discharge to the - to the final destination will be at the cost and risk of the cargo owner.

BY MR MALOOF:

Q This is what the common language of that stamp means to you? Right?

A Correct.

Q Now, as a man in the shipping business, where are the nearest non-U.S.A. ports to New York City?

A The east coast of Canada.

Q Name some of them?

A St. John, Halifax, Yarmouth.

Q Quebec?

A I don't believe that is closer than the others.

Q Would it come under the definition of ports

nearest non-U.S.A. ports, if they couldn't get in any others, perhaps Quebec?

A Perhaps.

Q Would you determine that as a direction to anybody else who read that bill of lading that that is where that cargo should go?

A Yes, to go to a non-U.S. port.

Q So, would it, then, be reasonable for somebody who knew that this ship couldn't discharge on the east coast, couldn't discharge at New York, that that could be called a bill of lading calling for discharge at a Canadian port?

A Well, at a non-U.S. port.

Q So, we have already agreed that the nearest non-U.S.A. ports are Canadian ports?

A Right.

Q My question is -

A All right, you are quite right, it is to be treated as - as a non-U.S. port.

Q In fact, it couldn't be interpreted or treated in any other way, could it?

A Right.

HONEGGER:

Q To take it one step further, don't we then have the SINGAPORE TRADER as a ship destined for a Canadian port?

BY MR. BOWLES:

Objection. That is a conclusion you would like to reach.

BY MR. MALOOF:

Don't tell the witness what to say. I object to that.

BY THE WITNESS:

Could you say that again, please?

BY MR. MALOOF:

Could you please repeat the question?

BY THE OFFICIAL COURT REPORTER:

(REPEATING)

BY THE WITNESS:

Yes.

BY MR. MALOOF:

Q Then, sir, do you agree with me that under the guidelines we were talking about, - well, on direct examination there was quite a bit of discussion about this expediting group, and it

HONEGGER:

seems from your testimony that the purpose of the expediting group was to prepare a procedure whereby diverted cargo could be discharged in its own turn. Is that a correct statement?

A That is correct.

Q It wasn't a procedure not to discharge diverted cargo, was it?

A No.

Q And, actually, the whole foundation for the expediting group's being in business was to avoid congestion at the disadvantage of Canadian cargo and Canadian ships?

A Right.

Q If we had a port where there were no congestion, where there was no congestion, there wouldn't be any need for any priorities, would there?

A Correct.

Q So, that if there was space available and the ILA local was willing to discharge, there shouldn't be any problem? Right?

A Correct.

Q Do you know who the Detroit agent is for the

owner of the SINGAPORE TRADER, or was at that time, I am sorry?

A I can't be definite. I think it would be International Great Lakes Shipping Company.

Q Would you know who the agent was at Duluth?

A No.

BY MR. BOWLES:

Do you know if she had an agent at Duluth?

BY MR. LOESBERG:

Wait a minute, wait a minute.

BY MR. BOWLES:

You are suggesting something -

BY MR. LOESBERG:

It is cross-examination.

BY MR. BOWLES:

You are suggesting something that hasn't been established at all.

BY MR. MALOOF:

If there wasn't an agent, it would be different. There is no foundation for the objection.

Q I think you testified that you were the agent for some shipping lines, for the Great Lakes?

A Yes.

Q So that you wou ld be asked to perform certain functions for this line, for the entire Great Lakes area, for your company?

A For the SINGAPORE TRADER?

Q No, for other companies?

A Yes.

Q And does the nature of some of your work in connection with principals like that involve dealing with shippers of cargo?

A Yes.

Q So that a part of your work could be the solicitation of cargo?

A Yes.

Q And the handling of all the arrangements with shippers of cargo?

A All normal arrangements, yes.

Q what were the outside limits of your agency for the owner of the SINGAPORE TRADER?

Perhaps I can clarify that: were you a general agent in a certain geographical area?

HONEGGER:

A No.

Q What were you?

A We were specific port agents for Montreal.

Q Only?

A Yes.

Q And in the capacity of port agents, did you deal with the shippers of cargo?

A For the SINGAPORE TRADER?

Q Yes.

A No, sir, no.

Q Wasn't that within your capacity?

A No, sir.

Q Was there another company here that did that?

A No, sir.

Q Was that handled from New York?

A As far as I am aware, yes.

Q By Mr. Herlihy?

A By him or his company, yes.

Q Would you consult with him, perhaps, if you needed help in any way?

A I am sorry, I don't quite understand that. Are you still referring to the SINGAPORE TRADER?

HONEGGER:

Q Yes, sir, or the owner of the SINGAPORE TRADER. Well, let me try to put it with a little background: the SINGAPORE TRADER was going into Detroit -

A Yes.

Q - and she was going to come out presumably empty?

A That I don't know.

Q Well, I am sure it would be stipulated she was going to discharge this cargo in Detroit?

A Yes.

Q A whole ship-load of stuff?

A Yes.

Q I amassuming that the owner would be interested in putting some cargo aboard at the first opportunity?

A Well, I would assume so, yes.

Q And my only question was that if Mr. Herlihy, he had some cargo that was available in the Lakes, or in Montreal or something, might he not call on you, on a proposition to assist him?

A Well, he might - If I can qualify that, but I

don't believe he did.

Q No. My next question was, did he?

A Not, not that I am aware of, no.

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

Q Mr. Honegger, would you tell us what fitting was done on the SINGAPORE TRADER when she stopped in Montreal on her way?

A Well, the Seaway fittings were done, specifically, I can't tell you, but there were things had to be fitted, the Seaway lights, Seaway landing booms -

(PASSAGE OFF THE RECORD)

BY THE WITNESS:

I am not too sure - I am not too sure about the radio telephones. I think possibly the vessel received a waiver to proceed without a radio telephone.

(PASSAGE OFF THE RECORD)

BY THE WITNESS:

I can answer that properly -

BY MR. MALOOF:

HONEGGER:

Q Now, you testified, Mr. Honegger, that you checked all the Canadian ports?

A No, the Canadian ports I mentioned.

Q Then I think you mentioned Halifax, St. John, New Brunswick, Three Rivers, Quebec and Montreal?

A That is right.

Q To see if diverted cargo could be handled?

A Yes.

Q When you - Did you do that by phone?

A Yes.

Q Would you tell us how your question was phrased? When you called and asked?

A Well, we would call and not necessarily myself, but somebody in our company would call an agent, our agent or people representing us in these ports or stevedoring contractors, and say, "Would it be possible to bring a certain vessel into that port for the purpose of discharging a certain type of cargo?" And we would explain to them that the ship was a diverted vessel, and I think we would go on and say, "Well, what is the condition of the port, are things

congested, is there shed space available?"

Q Are you guessing now or is this the conversation?

A Well, it is two and a half years ago.

Q I don't want you to guess it, sir. If you w remember, I would like to have that, but if you don't remember, please say you don't remember.

A Well, I must say that verbatim, no, I don't remember.

Q Very well. Anyway, you can't say that cargo with that bill of lading and with that stamp would be discharged at your port? You didn't put it that way, did you?

A No.

Q In fact, you don't remember Mr. Herlihy asking you to check these ports, do you?

A Asking me?

Q Or your company.

A I don't remember, no.

Q No? No? I just wanted to pin that down.

A Yes.

Q And do you remember personally making the calls, or did somebody in your company make them?

HONEGGER:

A I remember making two calls at least, but maybe not on the SINGAPORE TRADER.

Q For other ships?

A For other ships and shipowners.

Q And to what ports did you call?

A Halifax and St. John.

Q Could you tell me to whom you spoke in Halifax?

A I spoke to the people who act as our sub-agents, a company called Pickford & Black Limited.

Q And at St. John?

A To a stevedoring contractor, Collins Stevedoring Limited.

Q You didn't talk to the local people of the National Harbours Board, did you?

A No.

Q You didn't talk to representatives of the ILA themselves?

A No.

Q While the SINGAPORE TRADER was in Montreal, you didn't check here in Montreal, did you, personally?

A No.

HONEGGER:

Q Do you know Mr. Cadotte of the Montreal ILA?

A I know <u>of</u> him, I don't know him.

Q We just, this morning, Mr. Honegger, examined under oath Mr. Côté who was with the Quebec National Harbours Board, and Mr. Walsh, business agent for the Quebec ILA. Without fear of contradiction by Mr. Bowles, I will tell you what the testimony was. There was plenty of space to discharge the SINGAPORE TRADER. The National Harbours Board couldn't care less about hot cargo, they just give the space. You agree with that?

A Yes.

Q They give a berth to a ship when requested?

A Right.

Q They have the berth and the covered sheds empty.

A Mr. Côté -

Q Mr. Côté.

A Yes.

Q And Mr. Walsh of the ILA said that he would gladly discharge the hot cargo because when

A Excuse me.

Quebec had a strike, the east coast of the United States discharged cargo that had been destined for Quebec; so, with that foundation for this question: do you think that the, in your opinion as a man experienced in the shipping business, should the carrier or the owner of the SINGAPORE TRADER have sent his ship to Quebec to be unloaded under that bill of lading?

A That is a ticklish one because you are saying, telling me something -

BY MR. BOWLES:

Excuse me, perhaps the question should be: would you do it, also, would you recommend it?

BY MR. MALOOF:

With that bill of lading?

BY THE WITNESS:

With that bill of lading and if Mr. Côté and Mr. -

BY MR. MALOOF:

Walsh.

BY THE WITNESS:

- Walsh, had said that at the time, I think we would have said yes, that the ship could go in there.

BY MR. MALOOF:

Yes?

No further questions.

CROSS-EXAMINATION BY MR. ALAN S. LOESBERG:

Q Did Colley Steamships or Motorships handle - Did you deal with Gannett before?

A Oh, yes.

Q On prior occasions?

A Yes.

Q And did you ever deal with the ship the SINGAPORE TRADER before?

A No.

Q Did you deal with any ships owned by the same company as the SINGAPORE TRADER?

A Not that I am aware of, I don't believe so. Our connection with Canada - with Gannett has been primarily with two Japanese operators.

Q Did New York or the far east give the order for

HONEGGER:

It is about seven hundred (700) miles. I would tend to think that Halifax and St. John are closer than Bermuda.

BY MR. BOWLES:

Q In answering your question from Mr. Maloof as to whether, with the stamp on the bill of lading, the ship should go to Canada, do you consider whether or not she could discharge in Canada - whether she could discharge in Canada, in Canadian ports?

A Well, from the stamp on the bill of lading, I would say that the ship should go, but I don't think that that stamp on the bill of lading would satisfy the local authorities and the local of the ILA at these ports, that they should discharge the ship.

BY MR. MALOOF:

Objection to the opinion, since we have testimony that it would have -

BY MR. BOWLES:

The important thing is whether she could discharge, not whether she could go there.

BY THE WITNESS:

I don't think she could discharge.

BY MR. BOWLES:

Q Now, you testified that you had made inquiries, you and your office had made inquiries at various Canadian ports as early as September of 1971. Is that correct?

A Yes.

Q And as to those ports that you did not personally - did you receive reports from your employees?

A Yes.

Q As to conditions at those ports?

A Yes.

Q Is it normal in the course of your business to rely on reports given by your employees?

A Yes.

Q On these subjects?

A Yes.

Q Assuming that your office did receive a communication from Mr. Herlihy after you had made the inquiries with respect to other ships

HONEGGER:

at these Canadian ports, would you or your office have made a special call to those ports with respect to the SINGAPORE TRADER? - or rely on the information previously got with the other ships?

A We may have made a separate inquiry. I do know that. We did not only make one inquiry - we inquired to see if the situation had changed from time to time.

Q Did you receive any reports based on these inquiries of the situation of the Quebec union?

BY MR. LOESBERG:

Objection to the form of the question.

The man said he never contacted Quebec.

BY THE WITNESS:

Well, we contacted our agents in Quebec, and the information we got was that the ship could not be handled, or excuse me, diverted ships could not be handled.

BY MR. BOWLES:

Q Do you have any understanding or knowledge of the relationship between the ILA local at

Quebec, vis-a-vis the local at Montreal?

A Well, it is my understanding that the ILA local in Quebec follows the instructions of the ILA local in Montreal.

Q Why is that?

A The ILA local in Montreal is much stronger and the ILA local of Montreal normally does all the initial bargaining and negotiations with the employers, and whatever they settle for in Montreal is usually used in the other ports. By that I mean Three Rivers and Quebec.

Q And is it correct that you did not hear, during the strike, you did not hear in any way or receive any reports of the Quebec local taking an independent position from the Montreal local?

A That is correct.

BY MR. MALOOF:

Objection as to form.

BY THE WITNESS:

I did not hear.

BY MR. BOWLES:

HONEGGER:

Q Given the information you had on the labour situation in the various Canadian ports during this strike, and the priority system for the cargo and any other information you had available, would you have considered it prudent or not to recommend to a shipowner such as the owner of the SINGAPORE TRADER to bring that ship into one of these Canadian ports?

A I would not consider it prudent to do so, no.

Q Why not?

A The risks involved, the feeling we had that the ship would not be handled by the ILA labour, and the delays involved if by some miracle the vessel could be handled by ILA labour, by some manner or means, taking into account the priority system, that the vessel would have to sit and take not on a first-come, first-served term, but go to the bottom of the list.

Q Just to go back for a moment, you mentioned on the prior direct that you were familiar with the

rail and road facilities in Montreal and Detroit. Do you have any opinion as to whether the facilities at Montreal are better than, or less than the facilities at Detroit, generally?

A Well, I, I - The Montreal facilities for rail and truck to move to the United States are excellent. There are rail lines going to the United States or highways going to the United States, but I might be wrong here, but the, the question you asked me earlier was comparing Quebec, Montreal and Detroit, the move to the United States.

Q Yes.

A Whereas Detroit is already in the United States.

Q Yes.

A Now, I know that Detroit has very good highway facilities and rail facilities.

Q I have no further questions at this time.

BY MR. LOESBERG:

I have a question.

HONEGGER:

FURTHER CROSS-EXAMINATION BY MR. LOESBERG:

Q Mr. Honegger, Mr. Bowles keeps going back about the condition at Quebec. Is it not your testimony that you, yourself, contacted, you did not contact anybody in Quebec specifically and, if so, at what date, in connection with the SINGAPORE TRADER?

A No, I think I can say that I can only recall myself contacting two ports, one was Halifax and one was St. John.

Q So you, yourself, personally knew nothing about Quebec as far as inquiry or talks there? Did you?

A I made no inquiries myself, no.

BY MR. BOWLES:

I don't think that was -

BY MR. LOESBERG:

Just a minute.

BY MR. MALOOF:

Just a minute.

BY MR. LOESBERG:

Q When was the last time you were in Detroit?

A I think it was November.

Q November?

A Of 1973.

Q And how did you go there? By aeroplane?

A Yes.

Q You didn't take a train there, did you?

A No, sir.

Q By road from Quebec to Montreal, is that a hundred and twenty-five (125) miles?

A Somewhere around there, a hundred and twenty-five (125), a hundred and thirty (130), yes.

Q It is a highway?

A Yes. There are a number of highways.

Q All right.

I have no further questions.

FURTHER CROSS-EXAMINATION BY MR. MALOOF:

Q How long would it take a ship like the SINGAPORE TRADER to go from Montreal to Detroit?

A I would say about three days, all things being equal.

BY MR. LOESBERG:

That was a C-2?

BY THE WITNESS:

Well, we normally figure, for modern vessels, Montreal to Toledo, that is just close to Det . . two hours, ten - two days, ten hours, two days, twelve hours, and we have an awful lot of traffic between Montreal and Toledo. Now, the SINGAPORE TRADER was not the fastest vessel, but the restrictions on the speed actually are in the canal from here, say, to Lake Ontario, and the Welland Canal.

BY MR. BOWLES:

Assuming a fifteen-knot ship?

BY THE WITNESS:

About three days.

BY MR. BOWLES:

I have one further question.

RE-EXAMINATION BY MR. BOWLES:

Q There was a question asked by Mr. Loesberg on re-cross-examination about the situation in Quebec. Can you tell us whether or not you received information from your employees about the labour situation there in Quebec, based on

their inquiries?

BY MR. LOESBERG:

The SINGAPORE TRADER?

BY MR. BOWLES:

Any vessel.

BY THE WITNESS:

Yes.

BY MR. BOWLES:

Q In your business, do you make it a practice to personally check matters such as this in all details or do you rely on your employees?

A We rely on our employees.

Q I have no further questions.

FURTHER CROSS-EXAMINATION BY MR. LOESBERG:

Q What date was this you were told about Quebec? Do you have a memo of it?

A No, I don't, not in these files. I do know - and I mentioned before -

Q I am asking you just one thing, in respect to your employees, in response to Mr. Bowles' question you said your employees had told you about it - I want to know, first, what

employees told you anything with respect to Quebec and what dates?

A Well, I would say that of the people in our office, it would be either Mr. Colley, the president of the company, or the operations manager, Mr. Paulson.

Q Which one?

A Either one. I don't know.

Q You don't really know, when you say employees first and then you said Mr. Colley -

A Correct.

Q In fact, you don't remember really anybody checking Quebec, do you, as far as you are concerned, that you can testify about today?

A Today, no.

Q That is all. I have no further questions of this witness.

BY MR. BOWLES:

Based on your recollection? Correct?

BY THE WITNESS:

Based on my recollection.

HONEGGER:

FURTHER CROSS-EXAMINATION BY MR. MALOOF:

Q Mr. Honegger, what is it you just said you don't remember? Do you remember or not?

A Based on my recollection of, no, I don't remember at this moment.

Q No further questions.

BY MR. BOWLES:

You are not saying it didn't occur, are you?

BY MR. LOESBERG:

Objection.

BY MR. MALOOF:

Objection.

BY THE WITNESS:

That is correct, I am not saying it didn't occur.

BY MR. BOWLES:

No further questions.

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

Would you put this on the record, Mr. Reporter?

Upon request, Mr. Honegger, with

before this Court.

oOo

T I M M B. W. P A U L S E N, having been first duly sworn by the Commissioner of Oaths of the District of Montreal, took the stand and testified as follows:

MR. BOWLES: Let the record show that at Mr. Maloof's and Mr. Hayden's request, we have produced the file of documents from the files of Colley Motorships which had previously been produced at the deposition of Mr. Honegger.

DIRECT EXAMINATION

BY MR. BOWLES:

Q Mr. Paulsen, by whom are you employed?

A Colley Motorships.

Q In what capacity?

A Operating manager.

MR. MALOOF: Let me state for the record that the deposition is commencing at 12:40, even though we came up here yesterday evening for this purpose. Mr. Bowles has just brought the witness here.

Q Mr. Paulsen, at what time did you first see me today?

A It was around 10:00 o'clock.

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Q When did you commence talking to me, approximately what time?

A About an hour later.

Q Why was that?

A Because of other business which had to be taken care of.

Q How long have you been with Colley Motorships?

A Since 1962.

Q What was your position with Colley Motorships in October 1971?

A Operating manager.

Q Are you still operating manager?

A Yes.

Q What are your duties as operating manager?

A Handling, the whole ship's operation -- the whole ship itself, discharging, the whole ship's operations itself.

MR. MALOOF: What was that answer?

THE WITNESS: The whole ship's operations itself, the whole handling of the ship once it is here in Canadian waters.

Q Does that have to do with just loading and discharging of ships?

A Yes.

Q What is the primary business of Colley

Motorships?

A Car carriers.

Q Does Colley Motorships also handle other cargoes, bulk cargoes --

A It handles bulk cargo and generals.

Q It handles general cargoes?

A Yes.

Q Do you know Richard D. Herlihy of Gannett Trading?

A Yes.

Q How long have you known him?

A For about six years.

Q When would that relationship have commenced, do you recall?

A About six years ago through, of course, the office. I don't know the exact time when I met Mr. Herlihy.

Q In October 1971, was there any business relationship between Colley Motorships and Gannett Trading?

A Yes.

Q What was the nature of that relationship?

MR. HAYDEN: Objection.

Q You may answer.

A We were acting on their behalf.

Q In what area?

A Canadian.

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Q How long had that relationship been in existence as of 1971?

A About -- I don't know how long -- about six years prior to that.

Q Are you familiar with a ship called the SINGAPORE TRADER?

A Yes.

Q When did you first hear of the SINGAPORE TRADER?

A In October 1971.

Q From whom did you hear of it?

A Mr. Herlihy.

Q In what context?

A To possibly find out whether it would be possible to discharge the ship at a Canadian port.

Q How was this communication directed to you?

A By telephone.

Q Did you have one telephone conversation or more than one telephone conversation?

A Various telephone conversations.

Q Did you give an answer to Mr. Herlihy?

A Not right away. He asked us to check whether it is possible to discharge the ship and revert it the same day.

Q What answer did you give to Mr. Herlihy?

A That it would not be possible to discharge the ship

in various ports in St. Lawrence and in Canada.

Q On what did you base that answer?

A After checking with these ports.

Q Did you personally take any action to answer this question?

A Yes, I checked Quebec, Sorel, Valleyfield with the local agents.

Q Was anyone else in your office working on that?

MR. HAYDEN: Objection to the form of the question.

MR. MALOOF: Objection. It is a leading question.

Q Were you the only one in your office working on these questions?

A No.

Q To your kowledge, who else was working on it?

A Mr. Honegger.

Q Anyone else?

A No.

MR. MALOOF: What was the answer?

THE WITNESS: No.

Q To whom did you personally speak in Sorel?

A Mr. Roland Lemire.

Q Who is Ronald Lemire?

A He is the general manager of Sorel Agencies.

Q What question did you ask him?

A Whether it would be feasible to discharge the ship at Sorel.

Q What answer did he give you?

A He said, "No. No shedding space available."

Q To whom did you speak in Quebec?

A Phillip Baller.

Q What company is he with?

A Canadian Import Company, Ltd.

Q What question did you ask him?

A Whether it would be feasible to discharge the ship in Quebec and whether it would be possible, laborwise.

Q What answer did he give you?

A He said, "No it wouldn't be. You could expect problems from the union, the local union."

Q To whom did you speak in Valleyfield?

A Mr. Doug Milton.

Q What company is he with?

A Valleyfield stevedoring company.

Q What questions did you ask him?

A Again, whether it would be possible to discharge the vessel there, laborwise; also spacewise.

Q What answer did he give?

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A He said it will be possible. The port is very congested. Probably expect a long waiting time, and also shedding space is not available.

Q How many sheds do they have?

A One, to my knowledge.

Q In about that time, in October 1971, did you have any other communications with Mr. Milton concerning any other ship?

A Yes, we did.

Q What ship?

A The ship called the DAGRUN.

Q What was the communication concerning the DAGRUN?

A To possibly discharge a cargo of unboxed automobiles.

Q Approximatoly how many?

A 1300.

Q How did it arise that you had occasion to speak to Mr. Milton concerning the DAGRUN?

A The vessel was scheduled to discharge in the U.S. port in the Great Lakes which was strikebound.

Q Which port was that?

A Toledo, and then we switched to possibly discharge at Buffalo. After this ship arrived at Buffalo, she got strikebound there or blacklisted and was then diverted

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back to Valleyfield to discharge her cargo.

Q Was the cargo discharged at Valleyfield?

A Yes.

Q For unboxed autos, do you require shed space?

A No.

Q What is done with the cars?

A It is just in open space.

Q From your agency experience, basically, with Colley Motorships since 1962 or any other experience you have, are you familiar with the port facilities, labor facilities, transport facilities at the ports such as Halifax, St. John's, New Brunswick, Sidney, Nova Scotia, St. John's Newfoundland, Quebec, Levis, Quebec, Montreal, Valleyfield and Sorel?

MR. HAYDEN: Objection to the form of the question. Obviously leading.

MR. MALOOF: Obviously set up.

Q Are you or are you not familiar with those ports?

MR. HAYDEN: Objection, leading question.

Q You may answer.

A Except Levis and Sidney, Nova Scotia; the others ports I am familiar with.

Q The Port of Levis, Quebec; where is that?

MR. HAYDEN: He said he is not familiar with it. Are you going to ask questions about it?

MR. MALOOF: Objection to the form of the question.

MR. BOWLES: It is a different question. I asked if he was familiar with certain facilities at the ports and I am now asking him where it is.

MR. MALOOF: You mean if it is in North America?

MR. BOWLES: Please save your comments for the court.

Q Where is the Port of Levis, Quebec?

A Across the river from Quebec itself.

Q Do you know what labor group handles cargo in Levis, Quebec?

MR. MALOOF: Objection to the form of the question. He said he does not know.

MR. HAYDEN: Objection, as leading the witness.

Q You may answer.

A ILA labor.

Q To your knowledge, are any of the ports mentioned on the prior question non-ILA labor?

A Valleyfield and Sorel.

MR. HAYDEN: Valleyfield was not in the last

question. Objection to the leading of the witness.

MR. BOWLES: Let the reporter read back the last question.

MR. HAYDEN: It was not in there.

MR. MALOOF: Off the record.

(Discussion held off the record.)

MR MALOOF: Note that Mr. Maloof concedes that. That is off the record. My comment is off the record.

Note that Mr. Maloof conceded that Valleyfield was included in the question.

Q Referring to the SINGAPORE TRADER which was carrying approximately 8,000 measurement tons of general cargo from Hong Kong for New York and 60,000 plus pieces in cardboard boxes, primarily, do you have an opinion as to whether any of the Canadian ports that you are familiar with are suitable for the --

MR. MALOOF: Objection to the form of the question.

MR. HAYDEN: Objection as to leading the witness.

MR. MALOOF: Insufficient facts. There is no foundation.

MR. HAYDEN: There is no evidence whatsoever

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as to the capacity of the SINGAPORE TRADER and what is being carried by the witness and no foundation whatsoever has been laid for the question.

MR. BOWLES: I am asking him to assume that.

MR. HAYDEN: That is not what the question was.

MR. BOWLES: I will rephrase the question.

Q Referring to the SINGAPORE TRADER, Mr. Paulsen, I would likeyou to assume that she was carrying a general cargo from Hong Kong to New York of approximately 8,000 measurement tons and 60,000 plus pieces.

Do you have an opinion based on the knowledge that you have of the various ports as to whether any of those Canadian ports are suitable for that cargo?

MR. MALOOF: Objection to the form of the question.

MR. HAYDEN: Objection.

Q You may answer.

A Yes.

Q Which ports?

A Halifax, St. John's, St. John's Newfoundland, Quebec, Three Rivers, Montreal and Toronto.

MR. MALOOF: Are suitable?

THE WITNESS: Are suitable.

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Q Do you have an opinion as to whether some of those ports are not suitable, from the ones listed?

A From the ones listed, Sorel, Valleyfield would be not suitable.

Q Why is that?

A There is no shed space, sufficient shed space available for such a cargo.

Q Have you had any experience with the Port of Detroit regarding general cargoes?

A Yes.

Q Do you have an opinion?

MR. HAYDEN: Objection to the form of the question.

Q Do you have an opinion as to whether Detroit would be suitable for such cargo?

A Yes.

Q Is Colley Motorships a member of the Shipping Federation of Canada?

MR. HAYDEN: Objection.

A Yes.

Q Mr. Paulsen, assume for a minute that the SINGAPORE TRADER could have been handled in the Port of Montreal to have her cargo discharged, doyou know who her local port agents would have been?

A Colley Motorships.

Q And also assume that this ship carrying again approximately 8,000 measurement tons of cargo and 60,000 plus pieces and approximately 470 bills of lading, what type of work would you expect to have done?

MR. MALOOF: Objection to the form of the question.

Q You may answer.

A I would have had the whole handling of the ship including the discharging of the ship, sorting and delivering of the cargo.

Q Does Colley Motorships make charges for its work?

A Yes.

MR. HAYDEN: Objection to continuously leading the witness, Mr. Bowles.

MR. BOWLES: I think we can assume that they charge for the work.

MR. HAYDEN: I do not care what you assume. You are not entitled to lead the witness. The whole testimony should be stricken beginning with what his name was, for continuously leading the witness.

MR. BOWLES: No comment.

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Q Assuming the SINGAPORE TRADER would have been discharged or could have been discharged in Montreal, do you have an opinion as to what the probable agency fee would have been, what order of magnitude?

MR. MALOOF: Objection to the form of the question.

A Two percent of the inbound (freight) trade.

Q If the SINGAPORE TRADER could have been brought into any other Canadian port, do you have an opinion as to whether Colley Motorships would have had any duties or functions with respect to that ship concerning --

MR. MALOOF: Objection to opinions.

Q Do you have an opinion?

A We would have been agents, appointed subagents.

Q In those circumstances would Colley Motorships have earned any fees?

A Yes.

Q If the SINGAPORE TRADER instead of proceeding to a Canadian port went to Detroit, can you tell us whether or not Colley Motorships would earn an agency fee of any kind for that?

A Yes.

Q You would earn a fee for Detroit?

A We would earn a fee -- not for Detroit.

Q For Detroit?

A Not for Detroit, no fee for Detroit.

Q Mr. Paulsen, do you have an opinion as to whether, considering all the circumstances, the information you had regarding Canadian ports, whether it was more reasonable or not for the SINGAPORE TRADER to go to Detroit rather than attempt to discharge at any Canadian ports?

MR. MALOOF: Objection to the form. It is clearly a bad question and you are taking over the court's prerogative, I might say.

Q Do you have an opinion, Mr. Paulsen?

A Yes, the most reasonable was to send it to Detroit.

MR. BOWLES: I have no further questions at this time.

CROSS EXAMINATION

BY MR. MALOOF:

Q Mr. Paulsen, when did you first begin in the shipping business?

A When I was 16 years old.

Q How old are you now, sir?

A 36.

Q That is 20 years?

A That's righ

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Q Have you been with a ship's agent all that time?

A Ships' owners and ships' agents.

Q In that time you have learned a bit about the shipping business?

A I would think so.

Q And you consider yourself experienced in the shipping business?

A That's right.

Q You have had to deal with bills of lading in your career?

A Yes.

Q So you know what they are?

A Yes.

Q What are they?

A They represent the merchandise, the negotiable document.

Q Does it reflect the relationship between the cargo owner and the ocean carrier, usually?

A Could you repeat that.

Q I will rephrase the question.

Is the bill of lading the contract between the cargo owner and the ocean carrier?

A That's right.

Q In your career, is it at least customary for ocean carriers to comply with hthe terms of a contract that they have with cargo owners, if possible?

MR. BOWLES: Objection to this line of questioning.

Q If possible?

A Yes.

Q If it is impossible, we cannot ask that question, can we?

A No.

MR. BOWLES: Please strike my objection.

Q Did Mr. Bowles show you a copy of a typical bill of lading in this case?

A Yes.

Q Did you read the face of it?

A Yes.

Q Did you see the stamp on the face of it?

A Yes.

Q Based on your experience, how do you interpret that stamp?

A That if any ports are strikebound the owner has the right to proceed to a port where he can discharge a cargo.

Q Any port?

A Any port in the vicinity; any port on that continent.

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Q Any port where?

A On that continent, if possible. Any port where he can.

Q You interpret the stamp to mean that if the ship owner cannot discharge at New York, he can go to any port in North America or --

A Or Canada, right.

Q Any port in North America or Canada?

A Yes.

Q How do you interpret the meaning of nearest non-U.S. port or ports?

A It would be the nearest possible port where they could discharge the cargo. If it is 50 miles, if they can do it there; if it is 1,000 miles if they can do it there.

Q Doesn't that mean the nearest non-U.S.A. port?

A No. It doesn't say that.

Q It doesn't say that?

A Can I see that?

Q Read it again.

A (Complying.) Yes -- yes, that is right. I am sorry -- non-U.S. port.

Q So how do you interpret the meaning now, since

you have read the stamp again, of nearest non-U.S. port or ports?

A In this case, the nearest would be Canada.

Q How far away is Bermuda from New York, do you know?

A I have no idea.

MR. BOWLES: I would be willing to stipulate the distance with you.

MR. MALOOF: I would stipulate but I do not know it either. If we can get a mileage map, we can stipulate that.

MR. BOWLES: It is about 700 miles, to my knowledge.

Q How far away are the Mexican East Coast ports from New York?

A I couldn't say that.

Q You don't know that?

A No.

Q So that, I think, then from what we have said so far, you and I can agree that if the ship owner could have discharged the SINGAPORE TRADER at one of the East Coast Canadian ports, he had a duty to do so. Is that a fair statement?

MR. BOWLES: Excuse me. Would you repeat the question.

A Right.

(Last ponding question read.)

Q Would you agree with me, to go a little further, Mr. Paulsen, that once the ship, the SINGAPORE TRADER lost its ability to discharge its cargo in New York, this bill of lading does contain alternate ports of destination?

A Yes, it does.

Q And those alternate ports, in your opinion, are the eastern Canadian ports?

A Right.

Q Could we also agree then, to go a little further, that having lost its ability to discharge its cargo at New York, and reading the contract with the cargo owner, this cargo represented by this bill of lading then became bound for Canada. Is that a fair statement?

MR. BOWLES: Objection to this line of questioning.

A No.

MR. BOWLES: I think, Mr. Maloof, you are trying to qualify this witness as a legal expert and to have him answer the ultimate question that the court will have to answer.

MR. MALOOF: Have you done with your objection?

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Q Please answer the question, Mr. Witness. Would you like it repeated?

A Yes.

(Last pending question read.)

A No, it is not.

Q Did you read the testimony that Mr. Honegger gave in this case?

A No, I didn't. The clause stipulates East Coast ports. In other words, the owner still has the right to go to a Great Lake port or nearest East Coast port, it says.

Q Where does it say that?

A U.S. East Coast port.

MR. BOWLES: Read the whole clause.

Q Read the whole clause before you complete your answer because you are under oath, as you know.

A Yes, it stipulates non-U.S. port, on the clause.

Q I will have the last question repeated --

A Yes.

Q -- because I myself have forgotten how it read.

(Last pending question read.)

A Yes -- non-U.S. port -- Canada -- yes, it is -- the nearest will be Canada, in my opinion.

Q Therefore, I think it is fair to say that if it could not discharge at New York it was then alternately bound for an Eastern Canadian port?

A Right.

Q Who is Mr. Honegger?

A Mr. HHonegger is vice president of our company.

Q Is he your superior?

A Yes.

Q Was he your superior in October 1971?

A Yes.

Q Just for the record, I might say that I asked him the same question on his deposition on January 23, 1974, and I will read it to you:

"QUESTION: We take it one step further, don't we then have the SINGAPORE TRADER as a ship destined for a Canadian port?"

And the answer by the witness is "Yes."

So you agree with your superior?

A Yes.

Q I think you testified that Colley Motorships primarily handles automobile carriers and bulk cargo vessels?

A Yes.

Q About what percentage of your business covers car carrying ships and bulk cargo vessels and what percent-

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age is general cargo?

A I don't know the exact percentage but I would say 60 percent; 40 percent general, at that time, in 1971.

Q In 1971?

A Yes.

Q Sothat in 1971, most of your affairs revolved about ports which handled automobiles and bulk cargo?

A No, that is not quite true. Most of the ports handle both automobiles, bulk cargoes and general cargoes.

Q But the majority of your interest was automobiles and bulk cargo?

A But automobiles is, in fact, actually a general cargo handled exactly the same as general cargo.

Q Exceptyou don't need sheds?

A Yes, that's right.

Q It is discharged differently than general cargo?

A No -- slightly different in discharging them, yes. Instead of having them on pallets -- hooked on or driven off the ships.

Q There is a difference?

A There is a slight difference, yes..

Q You acted as agent for Gannett Trading at this time for the Canadian ports?

A Yes.

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Q You weren't strictly just a port agent?

A No, not strictly port agents, just for all Canadian ports.

Q That being in the nature of a general agency for Canada?

A Yes.

MR. BOWLES: Gannett, you are referring to?

THE WITNESS: Gannott -- yes, on behalf of Gannett.

Q Mr. Herlihy, you said contacted Colley Motorships and inquired about the SINGAPORE TRADER?

A Yes.

Q Do you know who he spoke to the first time?

A I cannot say exactly whether it was Mr. Honegger or myself; that I can't testify to.

Q Mr. Honegger doesn't remember talking to Mr. Herlihy at all about this, so we have to ask you.

A Then it must have been me.

Q What day was it?

A I couldn't say the day. The exact date I have no recollection.

Q You can't give us an approximate time?

A No, it must have been in the beginning of October.

Q Do you remember the phone call?

A Not the exact first phone call. I remember we had

a tremendous number of phone calls in respect of that vessel for being discharged anywhere in Canada.

Q Would you remember some of the language Mr. Horlihy used? What was the conversation? What did he say and what did you say?

A He was asking whether it would be feasible to discharge the ship in either Canadian ports; what the situation would be; what the labor situation would be. To which I replied, that we have to check this again to make sure and then reverted later on which we did and just advised him that most of these ports was not feasible because of anticipated union trouble.

Q Did you tell him that right away?

A I would say about three hours later on.

Q Three hours?

A Yes.

Q On the same day?

A On the same day.

Q Three hours after his first phone call?

A Yes.

Q What did you do in the meantime?

A Rechecking with the possible ports.

Q Which ports?

A Quebec, Sorel, Valleyfield.

Q Those were the ports you called?

A Yes, also Halifax and St. John's.

Q Wait a minute now.

MR. BOWLES: Did you personally call Halifax and St. John?

Q Didyou call Halifax and St. John?

A Possibly not in respect to this ship but with other ships too, I think.

Q Let's limit ourselves to this ship and we will talk about the others, and in response to Mr. Herlihy's request, what ports did you contact?

A Quebec, Valleyfield, Sorel.

Q That is all?

A And Three Rivers.

Q Is that it?

A That is it, yes.

Q And which ports did Mr. Honegger contact?

A That I couldn't say.

Q Did Mr. Herlihy use the word "feasible"?

A I can't testify to that.

Q You are not sure what he used?

A No.

Q Have we agreed before that the word should have been "possible"? Is it possible to discharge?

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A That is probably what he would have used but I don't know the context of our conversation at that time, the exact words.

Q So then you called four ports, right?

A Right.

Q Three hours later you called him back and what did you tell him?

A In our opinion, it would not be possible to discharge in certain ports, the ship.

Q Didyou discuss the physical facilities of those ports?

A Yes.

Q Shed space?

A Yes.

Q What did you tell him about the shed space at Quebec?

A It was utterly congested at this time and that probably there would be a tremendous waiting time involved to have the ship to be able to discharge, provided labor permitted.

Q Who is the best judge in Quebec of the amount of shed space there might be available?

A. The Harbour Board itself or the opeaating terminal operator, the stevedores.

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Q Who at the Harbour Board did you speak to in Quebec?

A I myself did not speak to him; the local agents did.

Q Well, you don't know that for a fact?

A No. Well, I have to assume that they did it.

Q You are assuming they spoke with him?

A Yes.

Q With whom in the union, the ILA union in Quebec, did you speak?

A Nobody.

Q Who is your agent in Quebec?

A At that time it was Canadian Import Company, Ltd.

Q Who did you speak with there?

A Mr. Phillip Baller.

Q Well, do you recall what you said to him?

A I was asking him whether it would be possible to discharge this ship in Quebec, labor-wise and would it -- whether sufficient shed space was available to do so.

Q You just didn't say "this ship"? What did you say to him?

A "SINGAPORE TRADER." I don't know whether I mentioned the ship's name but the facts that it was 8,000 measurement ton cargo, whether it would be possible to discharge it.

Q What other facts did you mention?

A Also that the ship had come over strikebound from the States.

Q And he gave you the answer right off the bat on the phone, right then and there?

A Right then and there that we could expect labor trouble; that possibly the ship could be blacklisted and couldn't discharge and also shed space at this time was not available.

Q You didn't tell him about the stamp in the bill of lading, did you?

A No. As far as I remember, at that time, we may not have had the bill of lading in our possession.

Q Because Mr. Herlihy didn't tell you about the stamp, did he?

A Not to my recollection -- I couldn't say.

Q Then you checked, beside Quebec, what other port?

A Sorel, Three Rivers and Valleyfield.

Q And those are all ILA ports?

A No.

Q Is Sorel an ILA port?

A No; neither is Valleyfield.

Q And with whom did you speak at Sorel?

A Mr. Roland Lemire, manager of Sorel Agency.

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Q That is also a sub-agent?

A Yes.

Q What did he say?

A He said that they have no shed space available.

Q You don't remember the date you called him?

A No.

Q There was no shed space available because they were so busy?

A Because there are no shed spaces.

Q They don't have any sheds?

A We knew this all along. We know this prior to the ship coming.

We asked him whether it would be feasible to discharge at possibly an adjacent supermarket or other empty spaces that could be used for this and which the answer was no.

Q In other words you thought to use other types of warehouse space?

A Possibly.

Q To protect the cargo?

A Yes.

Q Knowing that Sorel didn't have sheds?

A Yes.

Q Sorel must be one of the ports that specializes

in automobiles and bulk cargo?

A Sorel just specializes in grain handling, bulk, and grain handling, concentrate, facility.

Q Isn't that bulk cargo?

A Bulk cargo, that's right, but no automobiles.

Q So after you spoke to those four ports, you called Mr. Herlihy back three hours later?

A Yes.

Q And you told him no ports were available?

A Yes, that whatever we had found out about these ports that it would be at this time impossible to discharge the ships in.

Q Who didyou call at Valleyfield?

A Mr. Doug Milton.

Q Who is he?

A He is the manager of the Valleyfield stevedoring company and also the agent.

Q He is both in that case?

A He is both.

Q And the other person who made calls was Mr. Honegger?

A Mr. Honegger, right.

Q You don't know which -- where he called?

A Right.

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Q You didn't call Levis?

A No.

Q Do you know anything about Levis?

A I don't, but the local agents in Quebec knew and they checked around and there is also another port called Lausanne which was checked out too by them.

Q What did they say about Levis?

A The same thing. It would not be possible; no space available.

Q Levis was the question of space?

A Levis does not have any sheds.

Q No sheds?

A No sheds.

Q When Mr. Herlihy was on the phone with you did he discuss stevedoring rates at these differene ports?

A Not especially.

Q Did he discuss it generally?

A You mean the cost of stevedoring?

Q Yes.

A Sure.

Q It is a relevant question in the shipping business, isn't it?

A Yes, it is until you make firm commitments, to a certain point.

Q Of course, all ship owners are not as rich as Aristotle Onassis.

A I guess not.

Q And sometimes work on a pretty slim margin.

A Right.

Q So that the cost of performing their duties under bills of lading, if carefully handled, can very often make the difference between a profit and loss. Is that true, in your experience?

A That is true.

Q What was the conversation about the costs?

A The costs, I have to be vague on that. We never really went into the costs itself of discharging.

Q Just roughly.

A Probably mentioned that tonnagewise it might be 10 and 13 dollars or that stevedores would possible ask on a cost plus basis.

Q Where?

A In all of these ports.

Q Do they all have pretty much the same rates, the eastern Canadian ports?

A Except these two non-ILA labor ports, yes.

Q What is the difference?

MR. BOWLES: What do you mean? Are tjey

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higher or lower?

A They are --

MR. MALOOF: Yes.

A Lower.

Q Generally lower?

A Generally, depending on the contracts.

Q Because they don't have the union contracts to comply with?

A That's right.

Q Did you say you were familiar with Detroit?

A Yes.

Q And you said you didn't get any fee if you sent the ship to Detroit?

A That's right. It would be handled directly by Gannett.

Q You didn't make the decision to send the ship to Detroit anyhow, did you?

A No.

Q We took the deposition on a previous trip to Montreal of Mr. Walsh of the ILA union in Quebec and of Mr. Cote of the Harbour Board, and I think Mr. Bowles will agree that the testimony was roughly as follows:

Mr. Cote said there was plenty of room for the SINGAPORE TRADER; plenty of shed space, even named the

sheds the ships would have gone to; plenty of pier space and plenty of water.

MR. BOWLES: I am not going to agree with all of that. There was some shed space, some pier space.

MR. MALOOF: Well, of course, the deposition is in evidence. I do not require your stipulation.

Q And Mr. Walsh said, when the strike occurred on the East Coast of the United States, he had held an assembly of his members and they agreed to discharge any ship because when Quebec was last out on strike the East Coast of the United States didn't honor their strike, and he said he didn't care what New York did about it.

MR. BOWLES: Add to that, even though he had directives from New York.

MR. MALOOF: There is nothing in his testimony about directives.

Q Don't you think it is strange that your agent told you the things he did?

A No, because you can't believe the union. Whatever Mr. Walsh said, it is difficult to believe because he might have a local man say this, land in other ports and the local man gives you the guarantee -- not guarantee, but says, yes, we will, and then you have some people

coming from New York and the whole thing is shut down.

Q Suppose he did discharge hot cargo in that period of time, you could believe that, couldn't you?

A Depending on the cargo; whether the cargo was labelled or not. If the cargo was labelled New York or other East Coast ports -- if it wasn't labelled, I agree, he could have done so.

Q You mean the cargo itself?

A Yes.

Q That makes a big difference to you?

A Not to me but to these people it does.

Q This is your experience, right?

A Yes, and we already have agreed that this is a Canadian bill of lading, after the strike diverted --

MR. BOWLES: I do not concede.

A Not a Canadian bill of lading.

MR. MALOOF: I do not need your agreement. You are not a witness in the case.

MR. BOWLES: I am not bound by this then.

MR. MALOOF: You have made Mr. Paulsen a witness and --

MR. BOWLES: That is a legal conclusion which the court will reach at some time.

MR. MALOOF: I disagree. That is a fact.

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Q I thought you testified under oath that you agreed with Mr. Honegger that if they couldn't discharge in New York, the ship was now destined for Canada.

A Yes.

Q That being the case and that being the contract between the cargo owner and the ship owner --

MR. BOWLES: Note my objection to the conclusions Mr. Maloof is stating.

Q -- do you think there is anything wrong in the ship owner taking this cargo to an eastern Canadian port for discharge?

A No.

Q Do you think there is anything wrong with him making the necessary changes on the documents to accomplish that purpose?

MR. BOWLES: Objection to that comment. That is suggesting that the document be falsified which is a criminal act and I do not think the witness has to answer that question.

MR. HAYDEN: It is not suggesting a criminal act.

MR. MALOOF: If you are an expert on Canadian law, I will eat your hat.

A I couldn't say that. I couldn't say that.

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Q You couldn't say that?

A No.

Q So you agree that he must discharge at the nearest non-U.S.A. port but you don't know if he has to do the necessary changing of documents? Is that your testimony, Mr. Paulsen?

A I don't know whether he can do the necessary changes.

Q You don't know?

A This I don't know whether legally he can do so.

Q You know as much about that as Mr. Bowles does.

A Probably much less.

Q Probably much more.

You have testified that various ports were suitable ports to discharge the SINGAPORE TRADER with roughly 8,000 measurement tons of cargo and over 60,000 pieces, assuming that is the number of pieces.

A Yes.

Q What were those ports again?

A Halifax, St. John, St. John's, New Brunswick, Quebec, Three Rivers, Montreal, Toronto.

Q When you said "suitable", I assume you meant the physical facilities were suitable?

A The physical facilities and also shipwise, physically

for the ships to enter the port.

Q That comes under physical ability.

A Also spacewise.

Q Everything together?

A Everything together.

Q Then you testified that Sorel and Valleyfield are not suitable because they have insufficient sheds?

A That's right.

Q Colley Motorships is a member of the Shipping Federation of Canada?

A Yes.

Q Does the ILA have contracts with the Shipping Federation of Canada?

A No.

Q With whom do they make their contracts?

A Maritime employers.

Q They don't make it with the Shipping Federation?

A No.

Q What does the Shipping Federation do?

A Representing the ship owners itself or management side.

Q In what way?

A On certain labor negotiations, etcetera, and also part of the labor, etcetera, but not directly with them.

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They deal as intermediaries, representing the ship owners' side, the maritime employers people, they handle the direct negotiations between the union and them.

Q During this effort that you made, this three hours, did you consult with Mr. Honegger?

A Yes, probably.

Q You don't remember but probably?

A Probably, yes. This was only rechecking again since this whole problem came up with all kinds of other ships we had been following on for three or four weeks already.

Q Should a competent ship's agent know all of the ports where a certain ship can discharge?

A You mean everything about the port?

Q Should he know all of the various ports, if he is asked, where a particular ship can be discharged at a particular time?

MR. BOWLES: Do you mean off the top of his head, should he know that?

Q Should a competent ship's agent know that?

MR. BOWLES: Should he know that instantaneously when the question is asked? Is that what you are asking?

Q Should he at least know where to inquire?

A Yes, definitely.

MR. BOWLES: He should know where to inquire? Is that the question you answered?

A He should know where to inquire. He can't know off the top of his head all these questions on his fingertips.

Q Do you think that information learned from an inquiry about one ship is necessarily valid with respect to an inquiry about another ship?

A Not necessarily, no.

Q When you spoke to Mr. Bowles this morning about this case, did he discuss the previous testimony in this case that other witnesses had given?

A No.

Q Did you discuss the facts of the case?

A Certain areas, we did.

Q Who did most of the talking?

A Mr. Bowles.

Q Were you asked by Mr. Herlihy to secure an outgoing shipment for the SINGAPORE TRADER?

A No.

Q Do you know anything about efforts at St. John to secure an outgoing shipment of newsprint --

A No.

Q Let me finish the question.

Newsprint or wood pulp?

A No.

Q In these conversations were the ships' agents you called, Mr. Paulsen, was there some point made that if the cargo was not manifested for a specific Canadian port?

A No, that was only mentioned that it was U.S. cargo.

Q That was one of the things that was troublesome?

A Not manifested.

Q Being manifested for a specific Canadian port?

A No.

Q That wasn't the problem?

A No.

Q Was a distinction made, Mr. Paulsen, between a ship diverted at sea toward a Canadian port and one which is strikebound and then comes to a Canadian port?

A Yes.

Q When you made these phone calls, did you make any notes on paper?

A Yes, I probably did.

Q Do you have them?

A No.

Q What did you do with them?

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A Probably threw them away.

Q Did you throw them away right away or keep them awhile?

A Kept them awhile.

Q About how long?

A I would say until the end of the year.

Q The end of 1971?

A Yes.

Q Do you throw all of your papers away at the end of the year?

A Probably these notes. We would have kept them in the file if it would have come through discharging in a Canadian port. In general, notes, we make over 1,000 a day and you just can't keep them.

Q You knew before the end of the year that the SINGAPORE TRADER had stranded in the St. Lawrence River?

A By that time they were just general notes about general questions.

Q After that time you destroyed these notes?

A It was before -- it could have been November -- the end of November.

Q I thought you said the end of the year?

A The end of November. It was the end of November. I can't say 100 percent.

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Q You knew on October 15 that the ship was stranded, didn't you?

A If that was the date.

Q I just asked you, yes or no, that is all we need.

A Yes.

Q I want to read to you now --

MR. BOWLES: What are you reading?

MR. MALOOF: Mr. Honegger's deposition, Page 49.

Q On Page 49 of the testimony of your superior, Mr. Honegger, as follows:

"QUESTION: Do you know of Mr. Cadotte of the Montreal ILA?

"ANSWER: I know of him, I don't know him.

"We just, this morning, Mr. Honegger, examined under oath Mr. Cote who was with the Quebec National Harbour Board, and Mr. Walsh, business agent for the Quebec ILA. Without fear of contradiction by Mr. Bowles, I will tell you what the testimony was. There was plenty of space to discharge the SINGAPORE TRADER. The National Harbour Board couldn't care less about hot cargo, they just give the space. You agree with that?

"ANSWER: Yes.

"QUESTION: They give a berth to a ship when requested?

"ANSWER: Right.

"QUESTION: They have the berth and the covered sheds empty?

"ANSWER: Mr. Cote --

"QUESTION: Mr. Cote.

"ANSWER: Yes."

Do you agree with all that so far?

MR. BOWLES: What is the question?

Q The main question in that series, they give a berth to a ship when requested and the answer was, right.

Now, the question on the bottom of Page 49:

"QUESTION: And Mr. Walsh of the ILA said that he would gladly discharge the hot cargo because when Quebec had a strike, the East Coast of the United States discharged cargo that had been destined for Quebec, so with that foundation for this question: Do you think that the, in your opinion as a man experienced in the shipping business, should the carrier or the owner of the SINGAPORE TRADER have sent his ship to Quebec to be unloaded under that bill of lading?

"ANSWER: That is a ticklish one because you are saying, telling me something --"

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And then: "BY MR. MALOOF:

"With that bill of lading?

"BY THE WITNESS:

"With that bill of lading --"

MR. BOWLES: You skipped something. Read the entire matter.

(Discussion held off the record.)

Q "BY MR. BOWLES:

"Excuse me, perhaps the question should be: Would you do it, also, would you recommend it?

"BY MR. MALOOF:

"With that bill of lading?

"BY THE WITNESS:

"With that bill of lading and if Mr. Coto and Mr. --

"BY MR. MALOOF:

"Walsh.

"BY THE WITNESS:

"-- Walsh, said that at the time. I think we would have said yes, that the shipping company could go in there."

Do you agree with that?

A Yes -- if he would have said that, possibly, yes -- if no other ports were available.

MR. MALOOF: I have no further questions.

CROSS EXAMINATION

BY MR. HAYDEN:

Q Whon was the DAGRUN discharged at Valleyfield?

A I will have a look at the file.

Q The DAGRUN file?

A Yes --

Q Are you roferring to the DAGRUN file?

A Yes, for the exact dates.

Q Did you study that file in anticipation of this morning's --

A No.

Q What made you bring the DAGRUN file?

MR. BOWLES: I asked him to.

A We dug it out of the basement where we store all files.

This was on the 14th, discharged on the 14th and 15th of October.

Q Following the trading of the SINGAPORE TRADER, did you get involved in a flurry of telephone calls and everything else?

A After this was handled by another person in the office and Mr. Hurlihy.

Q There are obviously many, many pencilled notes

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and things in regard to what was going on.

A I would think there must have been. It was mainly handled by Mr. Herlihy, I think.

Q Has that file been thrown out also, containing all the pencilled notes?

A Possibly. I don't know, unless it is in these notes in the file.

Q Did you look for that file?

A No other file exists except this one.

Q Did you look for that other man's file?

MR. BOWLES: You mean Mr. Herlihy's?

MR. HAYDEN: He said another man in the office.

A No, that is all what we have in the office; that is all. We looked for any notes we had.

Q You have no notes pertaining to the stranding of the SINGAPORE TRADER, what happened afterward, or to your discussions? They have all disappeared?

A Except what is in the file.

Q And you noted that you have the file here?

A The file, yes.

Q There are no notes in that file?

MR. BOWLES: Objection. I do not know what is in the file.

MR. HAYDEN: You have not looked at it?

MR. BOWLES: Just very cursorily the last time with Mr. Honegger.

MR. HAYDEN: May we see it?

THE WITNESS: (Handing.)

Q Is this DAGRUN one of your normal vessels?

A One of the normal vessels.

Q When was it that you made arrangements to discharge that?

A After the ILA blacklisted her in Buffalo.

Q Was that about the 11th of October?

A I think so. I don't know exactly. I would have to look at the note.

Q How long did the strike last in the United States?

A I can't say exactly whether it was a month or two months or three months.

Q How many vessels did you arrange to have discharged at any Canadian port during that period that had previously been assigned to U.S. ports?

A That again I couldn't say how many. Quite a lot of this cargo, especially the automobiles we rerouted via Canadian ports at that time with bills of lading and everything reading for Montreal.

Q How many vessels would you estimate then were

rerouted?

A I, even estimating just for our own company -- for the other companies I couldn't even say what might have been rerouted.

Q How many did Colley Motorships handle?

A Maybe 15 or 20.

Q 15 or 20 ships discharged at Canadian ports?

A Yes.

Q What percentage of the business does Colley Motorships handle here, about?

A Compared to other companies, it is hard to say. I couldn't even wager a guess.

Q If you handle 15 or 20 ships diverted here, would you have any idea of the total number of ships diverted here to Canadian ports?

A I would have no idea even to make a guess.

Q If you handle 15 or 20, it would have been double that, perhaps?

A Double, maybe even triple.

Q Could it have been more than triple? Maybe 100?

A Maybe 100.

Q In other words, it could have been 100 that were diverted and handled in Canadian ports?

A Yes.

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MR. MALOOF: Your witness.

RE-DIRECT EXAMINATION

BY MR. BOWLES:

Q Mr. Paulsen, the automobile carrying ships that you just mentioned as being diverted, and you mentioned the bills of lading; are you familiar with the bills of lading on those ships?

A Yes.

Q What do those bills of lading read?

A Montreal.

Q Do you know when the word "Montreal" was put on the bills of lading?

A At the port, the loading port, that is where the bills and all documents are issued.

Q Did you have any circumstances such as the SINGAPORE TRADER, where the ship was actually strikebound in a U.S. East Coast port, with bills of lading reading for that port or some strikebound port?

A No.

Q Did the DAGRUN ever actually enter the Port of Buffalo?

A She entered the port outside. Even though we had the union's guarantee they would discharge, they turned around and then refused to do so.

Q What did you do with the ship?

A It was then diverted here to the only port available, which was Valleyfield, to handle the ship.

MR. BOWLES: No further questions.

MR. HAYDEN: I have some questions.

RE-CROSS EXAMINATION

BY MR. HAYDEN:

Q My assumption is correct, is it not, that the bill of lading on the DAGRUN listed a U.S. discharge port?

A I don't know. I think it was listed as Buffalo, and when the vessel arrived, a picket line was thrown up even though the union agent said there was no problem discharging the ship at Buffalo.

Q And it was thereafter discharged at a Canadian port?

A Yes, the only port or the nearest port available.

RE-DIRECT EXAMINATION

BY MR. BOWLES:

Q Is there ILA labor at Valleyfield?

A No, no ILA. It would have been impossible to discharge that ship at the port otherwise.

(Continued on Page 54a)

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(Whereupon, at 2:15 p.m., the within examination was concluded.)

_____

Timm B.W. Paulson

Subscribed and sworn to
before me this_____
day of_____
1974.

_____

oOo

ARTHUR CADOTTE, SECRETARY-TREASURER, LOCAL 375, INT'l. LONGSHOREMEN'S ASSOC., MONTREAL FOR CLAIMANTS-APPELLEES
(CL. EX. C)

On this twenty-second day of January in the year of Our Lord nineteen hundred and seventy-four, personally came and appeared

ARTHUR CADOTTE

who, having been duly sworn, doth depose and say as follows:

BY THE OFFICIAL COURT REPORTER:

Q What is your name, please?

A Arthur Cadotte.

Q What is your occupation?

A Secretary-Treasurer of Local 375, International Longshoremen's Association.

Q Your address?

A 193, St. Andre Street, Montreal.

Q Any apartment?

A No.

Q Your age?

A Sixty-five (65).

EXAMINATION BY MR. DAVID L. MALOOF,

Representing Various Cargo Interests:

Q Mr. Cadotte, did you have the same position in October of 1971?

CADOTTE:

A No.

Q What was your position at that time?

A At that time, I was organizer for the ILA.

Q In Montreal?

A In Montreal, and I was also in Quebec for ten weeks replacing Teddy Greason, the president.

Q Were you in Montreal in October, 1971?

A I was in Montreal, yes.

Q Do you remember in October, 1971 that there was a strike in the United States?

A I don't know if it is in '71 but I know that there was a strike there. The year, now, I don't really, I can't state the year, but it must be '71 if you say it is '71.

Q I think we can stipulate that it was 1971. Is that fair enough, Mr. Bowles?

BY MR. BOWLES:

Agreed.

BY MR. MALOOF:

Q Did that strike have an effect on the ports in the eastern part of Canada?

A Well, I believe that what we had to do was a

CADOTTE:

collective bargaining agreement at that time with the Shipping Federation of Canada, and we could not very well refuse to handle cargo, due to the fact that we had an injunction from the Court, and on top of that, we would have been fined, and I believe at that time the fine was as much as fifty thousand dollars ($50,000.00) a day.

Q Now, the function of your organization is to discharge cargo from ocean-going vessels in Montreal? Is that true?

A It is loading and unloading.

Q Loading and unloading? Both?

A Yes.

Q During the strike that we are talking about, if you were requested by a ship to discharge cargo in Montreal, which was carried under a bill of lading, a copy of which I have put in front of you, carrying a stamp which I am pointing to, would you have had to discharge that cargo in Montreal?

A The manifest would have been made, if it had been

CADOTTE:

made in Montreal, there would be no question, because very often, we have known that there was a bill of lading that was falsified.

I might as well state the word, you know, the captain or the mates fix up things. Sometimes cargo was, we knew was from the States but was marked here in Montreal - it was marked via Montreal.

Q When you say "manifest", do you mean a bill of lading?

A Bill of lading.

BY MR. BOWLES:

I am sorry. Objection. Leading - the witness has stated a manifest.

BY THE WITNESS:

A manifest is a bill of lading, for us.

BY MR. BOWLES:

Is that your understanding of it?

BY THE WITNESS:

Yes, as well as a manifest, it is a bill of lading.

BY MR. MALOOF:

CADOTTE:

Mr. Reporter, would you mark this document, please, Claimant's Cadotte No. 1?

Q Mr. Cadotte, will you read the stamp which is on Claimant's Cadotte No. 1, please? Just to yourself is all right.

A All U.S. cargo will be discharged at the nearest non-U.S. port in the event of the longshoremen's strike, other U.S. east coast and continued cargo from such discharge points to bill of lading destination are at the cost and risk of cargo, risk of cargo.

Q Mr. Cadotte, then, with that stamp, if you had been asked to discharge this vessel, the SINGAPORE TRADER, in October of 1971, do you say that you would have had to discharge the vessel at that time?

A If the, if this here would have been on this, I doubt it, but there is one fact here that stands, we had a collective bargaining agreement with the Shipping Federation and the chances are that we would have refused to unload some cargo, if we had, that is, there would have been an

CADOTTE:

injunction against us from the Court.

Q Yes? Would you then have unloaded the cargo?

A Well, what can we do?

Q What would the alternative be if you didn't unload the cargo?

A Well, the alternative would be that the agent may sue us because certainly there was an agent on that ship and we, the injunction would have followed and we would have to go. It is as simple as that.

Q Your witness.

BY MR. LOESBERG:

Can I ask him a few questions?

BY MR. MALOOF:

Sure.

CROSS-EXAMINATION BY MR. ALAN S. LOESBERG,

Representing Various Cargo Interests:

Q Sir, how many gangs generally work to unload a ship like a, like an American C-2?

A Well, I will tell you, at that time there was lots of work here at the Port of Montreal, and sometimes, some people wanted to have fifteen (15)

CADOTTE:

gangs, well we could perhaps only afford twelve (12), but at least every ship was working, if they were working; now, supposing that we have a big ship, well, with the biggest hatch -

Q The long hatch?

A The long hatch, to begin with, and then you would get some other people to come and reinforce them.

Q All right. How many tons of general cargo does one gang unload per hour?

A I would state from twenty-five (25) to twenty-eight (28) tons.

Q And how many men to a Canadian gang here?

A A Canadian gang here is eighteen (18) men, sometimes twenty (20), depending on the cargo.

Q And do they ask for extra men?

A They have a chance to get six (6) extra men.

Q And can you work at night?

A Work at night? People are willing to work at night here, and because, of course, at the time, it is a little bit different, but when it is really good weather, people don't refuse to work,

CADOTTE:

day and night.

Q Do they work Saturdays and Sundays?

A Saturdays, Sundays, any days. Generally, five (5) days during the year that we don't work, this is the day before Christmas, Christmas day, and the day following Christmas, and then it is the same for New Year's, and also the Labour Day.

Q Right.

A Seven (7) days, seven days we call, no work can be done on these days, but the other time we do work.

Q No further questions.

CROSS-EXAMINATION BY MR. LAWRENCE J. BOWLES, Attorney for Plaintiff:

Q Referring to Claimant's Cadotte No. 1 for identification, a copy of the bill of lading for the SINGAPORE TRADER, we note that this cargo is consigned to the Port of New York.

A At that time I believe New York was on strike.

Q Were you aware of the fact that the SINGAPORE TRADER had actually gone to New York and

CADOTTE:

discharged part of her cargo there?

A No, because the SINGAPORE TRADER, I believe it was never seen in the Port of Montreal.

Q Excuse me. That is not the question -

BY MR. MALOOF:

Well, let the man finish the answer, Mr. Bowles, please, to save time.

BY MR. BOWLES:

I think we will save time by proceeding.

Q That is not my question, sir.

The ship we are talking about, the SINGAPORE TRADER, were you aware or are you aware now, in answering these questions about the ship and about whether you would have discharged it, that the SINGAPORE TRADER, in fact, went to New York and discharged part of her cargo there before leaving New York? Are you aware of that?

A No.

Q And this bill of lading, is it correct that nowhere does it mention Montreal on it? Is that correct?

CADOTTE:

A I don't see Montreal nowhere, and when I check it up that is not Montreal no place.

Q Right. Now you mentioned that you called a manifest before? Is that correct?

A Yes, sir.

Q Now, is there another document on the ship giving the entire list of her cargo?

A Yes.

Q Isn't that the manifest? - rather than this document?

A Well, I will tell you now, here, I work as a business agent here and we call that a manifest and I work, I work for four years as a business agent and when I was going on board a ship, I would ask for a manifest.

Q Right?

A Right, see, and this is a common word here, instead of a bill of lading.

Q I see.

A You see, it is a common word that we use for a bill of lading, we go and ask for the manifest, and I have seen plenty of times when ships,

CADOTTE:

where I was going on, and there was a description of all the cargo that goes into the ship.

Q Right?

A And what happened then and so on and so forth.

Q Right, and that you call the manifest also?

A Yes.

BY MR. LOESBERG:

That would be attached to a bill of lading sometimes - You are missing the whole boat.

BY MR. BOWLES:

No, he said it is a long list of all the cargo on the ship.

BY THE WITNESS:

Yes, I have seen it quite a few times, because at one time there, in 1971, we were working by the tonnage, so much per sling, and it was two dozen pounds per sling plus five per cent (5%) margin.

BY MR. BOWLES:

Let me continue here:

Q [illegible]ring the strike, and particularly in October 1971, we are talking about the strike on the -

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CADOTTE:

BY MR. MALOOF:

The New York strike because Montreal was not on strike.

BY MR. BOWLES:

Including New York.

Q Didn't this union have its representatives go down to the ship and check the manifest of the ships that were coming in, to see what port they were destined for?

A He has plenty of time, and sometimes it was some cargo that was put on the deck, on the dock, and returned into the ship afterwards.

Q Why?

A Because it was - because it was considered hot cargo.

Q What is hot cargo, sir?

A Hot cargo means this here: to us, at the ILA, if we find out that we are going to be a nuisance or there is an effect, we won't touch it.

Q And was this cargo during the strike, cargo that should have gone to New York and it would have affected your New York -

CADOTTE:

BY MR. MALOOF:

Objection.

BY MR. BOWLES:

The cargo that was returned because it was hot cargo -

BY MR. LOESBERG:

Just a minute -

BY MR. BOWLES:

It is your witness.

BY MR. MALOOF:

What cargo, Mr. Bowles?

BY MR. BOWLES:

Just a moment, just a moment.

Q Going back, you mentioned that during the strike, some cargo was returned to ships during that strike?

A Oh, yes, yes.

Q What ship are you talking about?

A Oh, well, this is the one thing here, it is three years ago. I could not tell you which ship is, it was returned, but I know there was some cargo returned to the ships.

CADOTTE:

Q Yes, because it was hot cargo?

A It was hot cargo.

Q And it should have been discharged in New York? Is that correct?

A It could have been discharged anywhere in the States, I don't know.

Q But anyway, anywhere in the area covered by the strike in the United States?

A That is right, that is right.

BY MR. MALOOF:

Covered by the bill of lading, you mean?

BY MR. BOWLES:

You will have your turn to question him.

BY MR. MALOOF:

You are only confusing the witness.

BY MR. BOWLES:

The witness is quite clear in his answers - please -

BY MR. MALOOF:

Be careful about that, Mr. Bowles.

BY MR. BOWLES:

State your objection.

CADOTTE:

BY MR. MALOOF:

I have stated -

BY MR. BOWLES:

I object to your statements on that.

BY MR. MALOOF:

Do you object to my objection?

BY MR. BOWLES:

Yes.

BY MR. MALOOF:

Well, go ahead, put it on the record.

BY MR. BOWLES:

Q What is the relationship between your local and the International Union in New York?

A We are affiliated to New York. If at any time, if we need help from New York, we just have to ask. If we don't ask, we are under our own autonomy and we can act as we will.

Q Now, do they also ask you for help?

A Sometimes they do, sometimes because we will tell them, we even went further than that, some of our officers went to New York and told them plainly and said if you want us to go on strike

CADOTTE:

too, we said, we are willing to, and they said no.

Q Now, in the strike in 1971 -

A Yes?

Q Did your officers go to New York?

A Yes.

Q And did they discuss the strike?

A Yes.

Q Did the International Union in New York ask you not to handle hot cargo?

A Yes.

Q And did you agree not to handle hot cargo?

A We have agreed in this way, that it was February, March - but -

(PASSAGE OFF THE RECORD)

BY MR. BOWLES:

I am sorry. Let the record show that there was an interruption with a knock at the door.

What was the last question, please?

BY THE OFFICIAL COURT REPORTER:

(REPEATING THE QUESTION AS REQUESTED)

BY MR. BOWLES:

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CADOTTE:

Because of the interruption, we will re-phrase the question.

Q When your Union officials went to New York, did the local International in New York ask them not to handle hot cargo in Canada?

A Yes.

Q Did the local agree not to handle -

A The local agreed not to handle it.

Q I see.

Now, -

A There was lots of cargo that we knew was from the States, was going to the States, it was marked via Montreal, and at that time, we handled a hell of a lot. We had to handle it.

Q Now, this bill of lading in front of you, Cadotte Exhibit No. 1 for identification, does not say via Montreal on it?

A No.

Q The only thing it has is -

BY MR. MALOOF:

Let him read it, let him answer your question.

BY MR. BOWLES:

CADOTTE:

What is the question?

BY MR. MALOOF:

What is the answer?

BY MR. BOWLES:

Just a minute, what is the question?

(PASSAGE OFF THE RECORD)

BY THE WITNESS:

It has to go via the States, that is all that I can see, but the bill of lading, they have been changed a lot during the strikes.

BY MR. BOWLES:

Q Well, are you suggesting that if the bill of lading had been changed by, had not been changed by someone then you would have handled it, is that correct?

A Well, we had to - there were no other chances.

Q But it has to say Montreal? Is that correct?

BY MR. MALOOF:

Objection to the form.

BY MR. BOWLES:

Q The bill of lading has to be changed to say Montreal? Is that correct?

CADOTTE:

A Correct. The bill of lading or, Montreal or via Montreal, it was the same thing to us, we had to handle it.

Q Now, do you know who owns the SINGAPORE TRADER?

A No. I don't, I don't believe, I never seen that ship.

Q Are you aware that it is a company organized in the Far East, Singapore Navigation Company?

A I have seen that, I received here a paper to call the Commerce from New York and I received that paper, seen that paper only.

Q I see. Do you believe that the owner of the Singapore Navigation is a member of the Canadian, what do you call it, the Shipping Federation of Canada?

A I doubt it, I doubt it, because here the preference is given to those that are members of the MEA.

Q What is that?

A The Maritime Employers Association.

Q The SINGAPORE TRADER was not involved in that as far as your are concerned?

CADOTTE:

A I don't know.

Q I see. During the strike, did your union issue any press releases as to what you were going to do with respect to ships coming from the United States?

A No, we didn't.

Q Did you have any correspondence with any of the ship owners or ship owning groups concerning the strike?

A No. I don't believe that we had - perhaps there was some talking with the business agent on the docks, but I don't believe that we received no letters.

Q Well, did you personally discuss the policies of the union with any shipping federation representatives?

A No, because part of my work at that time, I was organizer for the IIA, organizer for the local here and also for the business in Quebec, and while I was in Quebec, I was representing Teddy Greason, International President.

Q Who in the local here would have dealt with

CADOTTE:

ship owners at that time?

A I believe that, Jean-Marc St-Onge would have dealt, we went to, he went to New York at least and I believe, if my memory is good, he went with Blanchette and Montreuil.

Q During the time that the strike was going on in the United States, you had more ships than normal in Montreal? Is that correct?

A Yes.

Q And did you have labour shortages that you couldn't handle some ships quickly, some had to wait?

A Some - There was not a ship, I believe, that never had no gang on or at least maybe for four hours or so, but as soon as the gang was available, we put the number of gangs that they wanted to - You see, we have stevedores and sometimes we take, at that time there was Eastern Canada, today - today is Logistic for Eastern Canada. They have changed names.

Q Who have changed names?

A Eastern Canada.

CADOTTE:

Q Who in Eastern or why in Eastern Canada have they changed names?

A God knows.

Q I am not following you, sir, we don't understand -

A No, but I mean before it was Eastern Canada, it was the greatest stevedores here in Montreal. When they want to have, say, sixty (60) gangs, they could not get it, no, it was only forty-eight (48) disponible, you have got forty-eight (48) gangs and you are short of men on some ships because our ships had to work, you see?

BY MR. MALOOF:

All ships had to work.

BY MR. BOWLES:

Q So that the ships were moving slower than they would normally? Is that right?

A Normally, no, the ships were slower than what they were before, but we have to bear in mind that we try to help every member of the Shipping Federation.

Q I see.

Did the government or the National

CADOTTE:

Harbour Board establish a series of priorities as to which ships were to be handled first, and which cargo was to be handled first during this strike?

A Well, this I couldn't state, because I don't deal very much with National Harbours Board, but we have got to bear also in mind that they must have had some ships that were preferred to some others.

Q Well, perhaps to refresh your recollection, didn't they prefer the Canadian ships with cargo destined for Canada first, and, say, ships with cargo via Montreal last?

A No, no, no, I don't believe there was no preference on that.

Q You don't recall that?

A No.

BY MR. MALOOF:

He didn't say he didn't recall, he said there wasn't any.

BY MR. BOWLES:

He also said he didn't deal very much with it.

CADOTTE:

BY MR. MALOOF:

No preference.

BY MR. BOWLES:

Q During the strike, during the period of the strike, were you aware that ships were going, that instead of to Montreal, to other ports in the Great Lakes, for example, Detroit?

BY MR. MALOOF:

Objection to form.

BY THE WITNESS:

We were aware that lots of ships were going to Toronto and Hamilton, and Detroit I couldn't state, because I know in Hamilton, Toronto and all those places, St. John, Halifax, and all of those other ports, the small ports, I have handled cargo.

BY MR. MALOOF:

During this period of time?

BY THE WITNESS:

During this period of time.

BY MR. BOWLES:

Q You are not aware of the situation of ships going

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CADOTTE:

to ports in the United States on the Lakes?

A No, no, because here we do, we don't keep track of the ships, of the ships. Ships, I believe you want to be able to state that, it could be to do with that, like the port master, perhaps he could give you much more definition than I can.

BY MR. BOWLES:

I have no further questions at this time.

RE-EXAMINATION BY MR. MALOOF:

Q Mr. Cadotte, hot cargo is cargo which according to the bill of lading is destined for the United States east coast ports? Is that right?

A Well, it was - we knew ahead of time it was for the States, but as I said before, we had a convention signed with the Shipping Federation of Canada and we tried to avoid trouble as much as we possibly can so this was marked via Montreal, we were handling it, the bill of lading would say Montreal; we weren't handling it without no argument.

Q If the bill of lading, for instance, Claimant's

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CADOTTE:

Cadotte No. 1 -

A Yes?

Q - gave the ship owner an option, well not only an option but an order to go to the nearest non-U.S.A. port or ports, which is a Canadian port -

A Yes?

Q - which means he could unload in Montreal, then this is no longer hot cargo, is it?

BY MR. BOWLES:

Objection to the form of the question. It is misleading and it has already been asked and answered on prior direct.

BY MR. MALOOF:

Well, may I have the question re-read?

BY MR. BOWLES:

You are simply trying to get a changed answer. That is all you are trying to do.

BY MR. MALOOF:

Answer the question, please?

BY THE WITNESS:

Without a shadow of doubt in mind, I believe that if the TRADER, the SINGAPORE TRADER would have

CADOTTE:

come to Montreal, this would have been erased -

BY MR. BOWLES:

According to the stamp on the bill of lading?

BY THE WITNESS:

According to the stamp on the bill of lading because I knew there were quite a few have done it.

BY MR. MALOOF:

Q What do you mean by -

A Well, they make another one, and this would not appear on it, and it would be stamped either Montreal or St. John or Halifax or anywhere at all.

BY MR. BOWLES:

Just a minute, let me note for the record that the witness is pointing to the stamp on the right-hand side of the bill of lading in giving his answer. The stamp which begins, "All U.S. cargo".

BY MR. MALOOF:

Q Would you read that stamp again, Mr. Cadotte, what do you think it says?

CADOTTE:

A According to what it states, to me, you know, it was the closest port in the United States -

Q The closest non-U.S.A. port? - It means Canada.

A Because -

Q If he can't unload in New York, he has to come to Canada?

A Because it was -

BY MR. BOWLES:

Objection, leading, he does not have to go to Canada, he can go to any non-U.S.A. port.

BY MR. LOESBERG:

You keep objecting and you are taking the witness off the track of his answer. You keep interrupting the continuity.

BY THE WITNESS:

I will read the stamp to you later.

BY MR. BOWLES:

It has been read into the record already.

BY THE WITNESS:

All U.S. cargo would have been discharged at the nearest non-U.S. ports.

CADOTTE:

BY MR. MALOOF:

Q What do you think that means?

A That means the closer, the closer would be, the closer will be Halifax.

Q So would it still be hot cargo if Halifax was on strike?

A No.

Q So if he came through Halifax, to Quebec and onto Montreal and asked you to discharge this cargo, wouldn't you discharge it?

A Well, we had to.

Q No further questions.

CROSS-EXAMINATION BY MR. LOESBERG:

Q Is Carling Steamships a member -

A Yes.

BY MR. MALOOF:

Of what?

BY THE WITNESS:

A member of the Maritime Asscciation of Employers.

BY MR. LOESBERG:

Right.

JEAN P. WALSH, BUSINESS AGENT, LOCAL 1739, INT'L. LONGSHOREMEN'S UNION, QUEBEC CITY, FOR CLAIMANTS-APPELLEES (CL. EX. B)

WALSH:

BY THE OFFICIAL COURT REPORTER:

Q What is your name, please?

A Janis Dambergs.

Q Your occupation?

A Court Interpreter.

Q Your address?

A 347, rue Principale, St. Thomas d'Aquin, Province of Quebec.

Q Any apartment?

A No.

Q Your age?

A Twenty-nine (29).

EXAMINATION BY MR. DAVID L. MALOOF:

Mr. Walsh, you can speak in French as you had requested.

BY THE WITNESS:

Merci.

BY MR. MALOOF:

Q Mr. Walsh, will you tell us what your position was in October of 1971?

WALSH:

A Business agent for the International Longshoremen's Union, Local 1739.

Q Is that the local for Quebec City?

A Yes, sir.

Q And what kind of work does that local do?

A It is unloading of ocean-going freighters in the Port of Quebec.

Q Is there any other organization that unloads ships, or is yours the only one that unloads ships in Quebec?

A It is the only organization to unload ships in the City of Quebec.

Q And how long were you with that local, sir?

A I was there twelve (12) years as president and six (6) years as business agent. That makes a total of eighteen (18) years working for that local.

Q And are you still today the business agent, sir?

A Yes, sir.

Q Do you recall in October 1971 that there was a longshoremen's strike on the east coast of the United States?

WALSH:

A Yes, sir.

Q Now, if a ship which had cargo which was destined for New York and was unable to discharge it fully at New York, and came to Quebec approximately October 12th at a time when there was a strike in New York, would your organization have discharged the cargo from that ship at the request of the shipowner or carrier?

A After having learned that there was a strike on the east coast of, a longshoremen's strike on the east coast of the United States, we decided, we had a special assembly, we decided to continue to work and to unload any ships, no matter where they came from, whether they came from the United States or Japan or any other foreign country, we would dischage those ships if we were requested.

Q Along about October 12th, 1971, did you receive a request to discharge a vessel called the SINGAPORE TRADER?

A No, sir.

Q If you had received a request to discharge a ship

WALSH:

called the SINGAPORE TRADER, would you have discharged her?

A Yes, sir.

Q Did you have, at that time in early October, say the first two weeks, sufficient gangs to employ on discharging a vessel like the SINGAPORE TRADER which had aboard approximately eight thousand (8,000) measured tons of cargo?

A Yes, sir.

Q Was there sufficient pier and shed space in Quebec City at that time to discharge the ship SINGAPORE TRADER?

A Yes, sir.

Q Your witness, Mr. Bowles.

BY MR. BOWLES:

Are you asking any questions, Mr. Loesberg?

BY MR. LOESBERG:

No questions.

CROSS-EXAMINATION BY MR. LAWRENCE J. BOWLES:

Q Mr. Walsh, do you have any objections to having any of your testimony given to the president of the International Local of the ILA?

WALSH:

BY MR. LOESBERG:

Just a minute, I object to this -

BY MR. BOWLES:

Stop that.

BY MR. LOESBERG:

Just a minute -

BY MR. BOWLES:

Let the question be asked to the witness and translated, and then you state your objection.

BY MR. LOESBERG:

I can object as it comes out of your mouth, and I object to this, on very serious grounds, it appears to me, and I don't know if you concur with me?

BY MR. MALOOF:

I do, fully.

BY MR. LOESBERG:

This is a threat to a witness, giving his testimony to somebody like that after he has testified freely, and I am shocked that you would do this.

BY MR. MALOOF:

WALSH:

So am I.

BY MR. BOWLES:

Are you finished?

BY MR. MALOOF:

Is my objection on the record also?

It is an obvious threat to the witness.

Translate it please.

BY MR. BOWLES:

The question is, "Do you have any objections to having this testimony you have given today, given to the president of the International Union of the ILA?"

BY THE WITNESS:

Whatever the ILA might think about it, a year ago we had a strike, we were on strike for a month, and all of the other ports continued working in Canada as well as the United States, and we decided we would carry on the work, in this case, and if the ILA doesn't like it, they can just throw us out.

BY MR. MALOOF:

And I might say that if Mr. Bowles goes ahead

WALSH:

with this threat as to disclosing the testimony to the International ILA, we will take this up at the Court.

BY MR. BOWLES:

I have made no threat. I asked him if he had any objections.

BY MR. LOESBERG:

I think you did. The inference, my friend, is serious.

BY MR. MALOOF:

Very serious.

BY MR. LOESBERG:

It goes to the very fundamental of our system of free testimony, that a man should not be threatened.

BY MR. BOWLES:

Q In 1971, did your local have a charter with the International Union of Longshoremen?

A Since 1948 we have had such a charter.

Q At the commencement of the strike on the east coast of the United States in 1971, did you have any discussions concerning what your local would

do in respect of the strike on the east coast of the United States?

A I will repeat once again, when we learned about the strike in the United States in 1971, we held a meeting of our members, and we decided to continue to work because our members were the ones to take this decision.

Q Did the International Union ask you not to handle hot cargo on board the ships?

BY MR. MALOOF:

Objection as to the form, hot cargo.

BY MR. LOESBERG:

You have to explain what you are talking about.

Just a minute, now, before you ask the next question, I want to confer - (INDICATING MR. MALOOF)

BY THE WITNESS:

Personally, I never received any correspondence to this effect. Perhaps the president of our local might have received some such correspondence, but I never had any such correspondence, either through the president nor directly from

the International Longshoremen's Association.

BY MR. BOWLES:

In the period of October 1971, did you personally deal with shipowners' representatives as to whether ships would or would not be discharged at Quebec by your union members?

BY THE WITNESS:

No, sir.

BY MR. BOWLES:

Q What were you doing at that time?

A I would call the employees and the people would bring the ship to berth, and I would send the employees out to work.

Q In that time, in October 1971, did your local issue any press releases concerning the position taken by your local?

A No, we were not very strong on giving news out to newsmen.

Q Did you have any correspondence with any shipowners or agents or representatives concerning the position taken by your local?

A No, sir.

WALSH:

Q In preparation for giving this deposition, what documents, if any, have you looked at before testifying?

A I didn't have to prepare any documents. I don't need any documents.

Q Well, of course, did you look at any documents?

A No, I didn't look, I have no correspondence with anybody and I didn't look at these documents.

Q Prior to the deposition, did you discuss the matter with Mr. Maloof and Mr. Loesberg? Is that correct?

A Yes.

BY MR. MALOOF:

The answer is "of course".

BY MR. BOWLES:

Q Mr. Walsh, did you look at the bill of lading in front of you marked Claimant's Cadotte No. 1?

A Yes, I looked at it but I know nothing about this.

Q This document has been identified as a bill of lading, one bill of lading for cargo on the SINGAPORE TRADER; and you will note that it

reads:

"The cargo was loaded on board the ship at Hong Kong for the Port of New York".

Is that correct?

BY MR. MALOOF:

The document will speak for itself. I object to the form.

BY THE WITNESS:

Yes. I can see New York and Hongkong marked there.

BY MR. BOWLES:

Q Do you recall how many ships were in the Port of Quebec during October 1971?

A No, sir.

Q Was the port busy at that time?

A We have daily reports from our employment room about the number of men being sent out to work, and I know that in those days there were often many not working.

Q Well, was the port busy - You had ships, did you have ships and was the port busy?

WALSH:

A As far as I know, there wasn't very much work. It wasn't very busy.

Q Do you understand the term "hot ship"?

Yes. I have heard that term being used quite often, hot cargo, cargo coming from elsewhere, yes.

Q No, hot ship.

BY MR. MALOOF:

You have to speak for the Reporter, Mr. Walsh. The answer is no?

BY THE WITNESS:

"No".

BY MR. BOWLES:

Q Mr. Walsh, assuming a ship went to the Port of New York and actually commenced discharging, and discharged some twenty per cent (20%) of her cargo there -

BY MR. MALOOF:

Objection to the form.

BY MR. BOWLES:

Let me finish the question.

BY MR. MALOOF:

WALSH:

It is bad from the inception.

BY MR. BOWLES:

Q - and then were diverted or re-routed to another port after a strike commenced, in New York, would that be a hot ship?

BY MR. MALOOF:

Objection. It has been answered. He never heard the term "hot ship". It must be one of your own words, Mr. Bowles.

BY MR. LOESBERG:

I never heard of it either.

BYMR. MALOOF:

And neither did I.

The witness said he never heard of the term.

BY MR. BOWLES:

Let him answer the question, please. You are interfering with my deposition.

BY MR. MALOOF:

I object to the harassment, the delay.

BY THE WITNESS:

That, that might, it might be termed that, it

WALSH:

would be the same thing as when we had our strike in Quebec and boats were re-routed, for example, to Boston, and I don't see any harm in that.

BY MR. BOWLES:

Q During the strike on the east coast of the United States, did your Union actually handle or discharge any hot cargo at Quebec, or hot ship?

A Yes, I believe we unloaded one ship of two thousand, three hundred (2,300) tons of meat, and that was supposed to go Boston.

Q Did you look at the bill of lading or manifest for that ship?

A No.

Q Do you know the terms on the bill of lading or manifest of that ship?

A No. This is the first time I see this document, (POINTING TO IT) -

Q No, we are not talking about this, the SINGAPORE TRADER.

A No, even as far as other ships are concerned, I never had any business looking for, looking at

the bills of lading.

Q So that with respect to the ship that you mentioned, you discharged some two thousand (2,000) tons of meat, you wouldn't know what the manifest read as to whether it read Boston only or Boston via Quebec or some other term, would you?

A No, I did not verify any papers because my job doesn't include verifying papers. I have no access to these papers and I wouldn't know whether it was marked Quebec or via Boston.

Q The question was via Quebec.

A The only boat that we did was the LAKE ONTARIO.

Q At the time of the strike, were you aware that ships otherwise destined for the east coast of the United States were going to ports on the Lakes including Detroit?

BY MR. MALOOF:

Objection to form.

You may answer. Go ahead.

BY THE WITNESS:

No idea.

BENJAMIN REPORTING SERVICE 5 BEEKMAN ST.

before this Court.

oOo

JOHN DOUGLAS MILTON, having been first duly sworn by the Commissioner of Oaths of the District of Montreal, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MALOOF:

Q Mr. Milton, will you tell us what you do for a living.

A I am the manager of a stevedoring company.

Q What is the name of the company?

A Valleyfield Dock & Terminal Co., Ltd.

Q Does this company have something to do with the Port of Valleyfield?

A We operate in that Port of Valleyfield. We have a franchise to do all the stevedoring.

Q Is the labor which is employed to discharge vessels ILA or non-ILA?

A Non -ILA.

Q Consider that there is a C2, 495 feet long, drawing 21 feet of water, would Valleyfield have the physical facilities to accommodate that ship?

A Yes.

Q How many sheds are available to you for general cargo at Valleyfield?

A Two sheds

Q Consider that we are discussing approximately 8200 measurement tons of general cargo, are those two sheds large enough to shelter that cargo?

A Yes.

Q Between October 3 and October 6, 1971, were those sheds substantially empty?

MR. BOWLES: Objection, leading.

A Well, the sheds were substantially empty.

Q I will rephrase the question.

Between October 3 and October 6, was there much cargo in those two sheds?

A There was a limited amount of cargo in the north shed which was removed by Canada Steamship Lines.

Q Were those sheds substantially empty for the rest of October?

MR. BOWLES: Objection, leading.

A Yes.

Q Would you say the same answer would be; that is to say, was there a limited amount of cargo in those sheds for the rest of October?

A There was a limited amount of cargo. The south shed

was empty and in the north shed some volume moving through, limited.

Q On or about October 3 or 4, 1971, do you remember a telephone conversation with a Mr. Paulsen of Colley Motorships concerning a ship called the SINGAPORE TRADER?

A No.

MR. MALOOF: Your witness.

CROSS EXAMINATION

BY MR. BOWLES:

Q What is the size of your two sheds, Mr. Milton?

A The south shed is 200 feet by 100 feet; the north shed is 200 -- 250 feet by 450 feet, which is owned by Canada Steamship Lines and we usethat shed for our cargo, at a price.

Q Do they also use the shed, at times?

A Yes.

Q What were the conditions of those sheds on about October 12 through 14?

A 12 through 15, there was some cargo in the north shed, which was loaded onto Canada Steamship Lines' own ships, a limited amount.

Q When you say limited amount, was it half the shed, quarter of the shed?

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A I would estimate a quarter of the shed and maybe less.

Q About how -- how about the south shed?

A There was no cargo in there. I mean there might have been some -- a couple of pallets of -- but, in effect, empty.

Q Valleyfield, your primary cargo handling is bulk work, isn't it?

A We handle much bulk and a little zinc and little produce cargoes.

Q In the course of a year, you do not handle much in the way of general cargo, is that correct?

A We have handled some considerable vessels but the local business calls for bulk and export generals, zinc .

Q Zinc is in bulk also?

A No, it is in units.

Q What kind of units?

A One ton bundles.

Q They are on pallets of some sort?

A No, they are self-made. They -- it is like a pallet but it is a bundle of zinc that you can handle with fork lifts.

Q Mr. Maloof asked if you can recall any conversations with Mr. Paulsen of Colley Motorships between

October 3 and 4 of 1971.

Doyou recall any after the 4th, say between the 4th and 6th?

MR. HAYDEN: Concerning what?

MR. BOWLES: Concerning the handling of the cargo from the ship.

A I don't recall at this moment any conversation.

MR. HAYDEN: He asked specifically with respect to the SINGAPORE TRADER.

Q Did Mr. Paulsen bring in a ship called the DAGRUN, October 11?

A Yes.

Q You have talked to Mr. Paulsen on a number of occasions?

A Yes.

Q When did he first approach you on the DAGRUN, do you recall?

A I don't recall. I feel that it was about two days before the ship arrived. I don't recall.

Q You don't recall?

A No, I don't.

Q You don't recall him mentioning the SINGAPORE TRADER by name, is that correct?

A No, I don't remember.

Q Did he talk to you about any general cargo

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ship in that period, October 1971?

A I don't recall him talking about it.

Q You are not saying he didn't; you are just saying you do not recall it?

A That is right.

Q Have you dealt with Mr. Paulsen since the DAGRUN?

A I have spoken to him this year. Last year I had little to do with him.

Q Since 1971, you have had other dealings with him or with Colley Motorships?

A With Colley Motorships, yes.

Q Have you had any dispute with them of any kind, business type dispute?

A No, we -- no real dispute. We have had a difference over an invoice which was settled, I think -- amicably, I think, to everybody's satisfaction.

Q Have you found them reasonable in their dealings?

MR. MALOOF: Objection.

A Yes.

Q The question concerning the SINGAPORE TRADER, Mr. Maloof gave some facts. There are a number of additional facts on that vessel that perhaps you have not

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considered yet.

She was a C2 vessel carrying approximately slightly in excess of 8,000 measurement tons and approximately 60,000 plus pieces of cargo from Hong Kong, originally destined for New York. She had 470 bills of lading and, of course, the cargo would have to be sorted into bills of lading to deliver each lot so each billing would go to the proper consignee.

Have you ever handled that amount of cargo in one time?

A We have subsequently handled more than that

Q At one time from one ship?

A Yes.

Q In October 1971, what kind of labor force did you maintain on your piers?

A We have a -- you mean how many men?

Q How many men, right.

A We had at that time about 50 regular men and we had about 150 part-time men.

Q What do these part-time men do during the other times they weren't working for you?

A Mostly unemployed.

Q Would they be employed in the local industries, farming or whatever?

A Yes.

Q On a part-time basis there also?

A Really I don't know what they did on their own.

Q How many of these 50 men would be available for your permanent staff, available for regular cargo work?

A All of them.

Q If they weren't busy working on other ships?

A Yes, of course.

Q If you had --

A Well, we split our experienced men in among the inexperienced men. When we have to, we spread the experienced labor with the inexperienced labor.

Q Do you have cranes at Valleyfield?

A We have one -- at that time.

Q Do you have more than one now?

A Yes.

Q Did you have more than one when you handled this other ship with more cargo than the SINGAPORE TRADER?

A No.

Q When was that approximately?

A It was at -- in November 1971.

Q This other ship that you handled, was the cargo in containers or on pallets?

A It was a combination of containers and pallets.

Q It wasn't loose cargo?

A There was loose cargo also.

Q The majority were in containers or pallets?

A No. I would say it was in volume about half and half.

Q Pallets and so on make handling quicker and easier?

A Yes.

Q It makes sorting easier, and so on?

A Yes.

Q Do you recall when the DAGRUN came into your port?

A It was October 14, I believe. If I can have my file, I will tell you exactly.

Q Do you have tother files here?

A I just have that.

October 14, the DAGRUN was in two days.

Q May I see that?

A (Handing.)

The DAGRUN we unloaded -- sorry.

Q Excuse me?

A Nothing, just --

MR. BOWLES: Will you please read the last answer.

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(Record read.)

Q How many ships can you take at a time at your berth?

A We can handle two general cargo ships.

Q And the DAGRUN is a general cargo ship?

A She wasn't at the general cargo berth.

Q She was at the south berth?

A Yes.

Q And the MINNIE LOTUS --

A Was at the south berth.

Q So two ships were at the south dock, is that correct?

A Yes. I am sorry. I believe we started unloading the DAGRUN. She moved to the north dock and as soon as the MINNIE LOTUS sailed, she moved in there. It was a layby berth.

Q The gangs for your general cargo, how many men are included?

A How many we need.

Q How many do you normally put on?

A 16.

Q If you put five gangs of men on and you had more than one ship in the port, what would be the percentage or your permanent staff that would be with the ship?

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MR. HAYDEN: I do not know what relevancy that this has whatsoever to the question.

A We would use our permanent staff in key positions and employed our casual labor in less demanding positions.

Q Do you have foremen, checkers and sorters?

A Yes.

Q Do they do this on a permanent basis for general cargo or year round basis for general cargo?

A Yes, seasonal business.

Q What was your stevedoring rate for general cargo in October 1971?

A The cost?

Q Yes, what would you charge, approximately, at that time for general cargo, boxed general cargo without pallets and of the type we described in the SINGAPORE TRADER, approximately?

MR HAYDEN: If you know.

Q If you were asked, what would you have quoted?

A At that time we took normal rate for diverted ships and added only something like 15 for strikebound diverted ships and the normal rate for general cargo was in the vicinity of $8 a ton -- $7.50 -- I don't recall the exact figures.

Q If you were asked, you would have quoted a

rate of $8 a ton plus 15 percent?

A If it was a strikebound, diverted for congestion, we would have charged more than our regular customers.

Q You charge your regular customers $8 or $7.50?

A In 1971, I think it was cheaper than that. I think the $8 or $7.50 would have been the strikebound rate. I am going from memory now.

Q Do you know how many truck lines you had serving Valleyfield compared to, say, Montreal or Detroit?

A Truck lines from Valleyfield, you have about 15 major truck lines.

Q As compared to Detroit? Do they have more at Detroit?

MR. HAYDEN: If he knows.

Q Yes, if you know.

A They have more in Detroit and more at Montreal.

Q What about railroad spurs and so on?

A Two rail lines, Penn Central and CNR.

Q One spur?

A One spur on the harbor operated by CNR but in Valleyfield we have two, the Penn Central as well as CNR.

Q Detroit and Montreal have many more spurs and lines, do they not?

MR. MALOOF: If you know.

MR. HAYDEN: If you know.

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A I don't know.

Q Do you have any records showing the actual condition of your sheds in October 1971, on a day-by-day basis, what was in each shed at those times?

A Throughout the month?

Q Yes. Day-by-day basis?

A Well, up until the end of October we had practically nothing.

Q Do you have any records that would support that or show exactly what you had on a day-by-day basis?

A No.

Q You do not maintain any?

A We normally -- we have a log book now that we put into effect in 1972, that we have a daily record.

Q You didn't have one in 1971?

A No.

Q You are relying on your recollection as to the condition of the sheds at that time?

A I have some figures of tonnages that we unloaded from ships and at that time the majority of the cargo was bulk and, therefore, wouldn't be in the sheds.

Q But you don't have a record to show precisely what was in the sheds on a day-by-day basis?

A No.

CAPTAIN ALEXANDER S. KERR, BERTHING SUPREINTENDANT, HARBOUR-MASTER'S OFFICE, NATIONAL HARBOURS BOARD, MONTREAL, (CL. EX. C)

On this twenty-second day of January in the year of Our Lord nineteen hundred and seventy-four, personally came and appeared

CAPTAIN ALEXANDER S. KERR

who, having been duly sworn, doth depose and say as follows:

BY THE OFFICIAL COURT REPORTER:

Q What is your name, please?

A Alexander S. Kerr.

Q Your occupation?

A Berthing superintendent.

Q Your address?

A 5488, Avonmore Avenue, Apartment 108, Montreal.

Q Your age?

A Fifty-seven (57).

BY MR. DAVID L. MALOOF,

Attorney representing Various Cargo Interests:

Gentlemen, we have the usual stipulations, I imagine. Is that agreeable? We will waive the usual signing of the deposition.

BY MR. LAWRENCE J. BOWLES,

Attorney for Plaintiff:

KERR:

I will consent.

BY MR. ALAN S. LOESBERG,

Attorney representing Various Cargo Interests:

Yes.

BY MR. MALOOF:

So, signing, sealing etc. of this deposition are waived and the usual stipulations are agreed as for depositions.

EXAMINATION BY MR. MALOOF:

Q What is your full name, please, Captain?

A Alexander Stevenson Kerr.

BY MR. BOWLES:

Before going into the questioning, let me ask this. This is a Discovery Deposition, is that correct? - or do you intend to take this in form for use at trial?

BY MR. MALOOF:

This is a de bene esse.

BY MR. BOWLES:

I will cross - Mr. Loesberg is the cargo claimant in this situation, and it would be his direct examination, not a cross-examination.

BY MR. LOESBERG:

I am a Defendant in this case. You sued us and I am Mr. Maloof's witness -

BY MR. BOWLES:

I will object to any cross-examination on your part.

BY MR. LOESBERG:

I don't understand why you are objecting before I have asked anything in cross-examination and, secondly, I don't know why you deny me the right of cross-examination which is perfectly normal in the American and English system.

Let's proceed.

BY MR. BOWLES:

I want to have stated on the record the ground rules for this deposition, who the parties are and who is calling this witness. The Cargo Claimants as a group, to my understanding, have called this witness. Let me finish. In any event, the Cargo Claimants are in the same category in this case while I am in a different category, representing the owner of the vessel.

KERR:

You are both cargo owners having claims against the ship owner. You are producing this witness, and I don't believe you are entitled to cross-examination.

BY MR. MALOOF:

Mr. Bowles, I arranged for the deposition of this witness. My firm - that is the only point I will make. I consulted with no one else and he is produced in that fashion.

BY MR. BOWLES:

And you are Cargo Claimant, is that correct, in this litigation?

BY MR. MALOOF:

I mean, do I have to answer that? The record is rather clear. Do you want to change places, or what?

BY MR. LOESBERG:

Do you want to go first?

BY MR. BOWLES:

No, I just want to know what the ground rules are for this deposition.

BY MR. LOESBERG:

KERR:

That there will be direct by him and then you and I will have cross.

BY MR. BOWLES:

That is agreed.

BY MR. MALOOF:

Let's go on.

BY MR. LOESBERG:

Let's go on.

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

Q Will you repeat, Mr. Kerr, what do you do for a living?

A Yes, I am a berthing superintendent in the Harbour-master's office of the National Harbours Board.

Q And what position did you have in October of 1971?

A I was the general superintendent of terminals.

Q For the same organization?

A Right, yes.

Q And how long have you been with the National Harbours Board?

KERR:

A Fourteen (14) years, almost fourteen years.

Q Do you recall anything unusual in the shipping business in the period of October 1971?

A Yes. I believe that was the time of the longshoremen's strike in the U.S.A.

Q Did the strike have any effect on the ports in Canada, in Eastern Canada?

A Well, I would say yes, it had some effect. I remember we were busier, at least through the fact that many ships were passing through the harbour of Montreal on their way to and from the St. Lawrence Seaway. There may have been some vessels, there probably were some vessels which were handling cargo right here. I have no figures on that.

Q Yes? Was the National Harbours Board involved in ships which would pass through and which stopped here for any reason - here meaning Montreal?

A What do you mean by "involved"?

Q Did you have anything to do with them, any duties?

A No.

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KERR:

The National Harbours Board, as such, does not handle the cargo themselves. The vessels are handled by the steamship agents or terminal operators who arrange for the handling of the cargo in port.

Q I meant as a much broader term, would a ship be able to come into Montreal without you being advised or -

A No, we have the arrivals and departures of all vessels because we have to be sure that the berths are clear before we can allow the ships to come in and tie up there.

Q For example, if a ship wants to discharge cargo in Montreal, are you involved in that - not in discharging the ship yourself but -

A No, in the case of a vessel which would request a shed for the handling of cargo, then we have several sheds which we can allocate for that purpose, if requested.

Q Must that request come to the National Harbours Board?

A For a daily rental shed, yes.

KERR:

Q I show you a document consisting of two pages and ask you if you can identify it.

(HANDING)

A Yes, this is one of our documents for vessels, a vessel's voyage card. Every vessel that comes into Montreal, we make out this voyage card. Actually it is one card - it is one card with two sides.

Q In other words, the second page is the back side of the card?

A Correct.

Q Mr. Reporter, would you mark this document, please? - as -

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

Identify that, then, as Claimant's Exhibit 1 for identification.

BY MR. BOWLES:

Now, let us not cause confusion -

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

Well, call it Claimant's Kerr No. 1 for

KERR:

identification.

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

Q And is that the card for the SINGAPORE TRADER?

A Yes.

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

Q And could you tell us, Captain, what information is kept on Claimant's Kerr No. 1?

(HANDING)

With respect to the SINGAPORE TRADER?

A To show the ship's name and the agent for that vessel, the draught of the vessel and the length of the vessel, and that we have a log on one side on which we report any important conversations between our office and the agent for that vessel.

Q Does it indicate when the vessel came to Montreal?

A It does, yes.

Q Does it indicate the purpose for which she came to Montreal?

KERR:

A Yes, it says that she came, she requested this berth to fit for the Seaway.

Q When did she come in?

A According to this card, she came in on the 13th of October at 11.10.

Q When did she leave?

A And she sailed on the 13th of October at 23.55.

Q And for what purpose was she here?

A To fit for the Seaway.

Q Is that the only purpose she was here?

A That is the only reason she was here.

Q If she was here for any other reason, would it appear on that voyage card?

A If we were told about it, yes.

Q If she requested pier space and shed space for discharging cargo, would that be on the voyage card?

A Yes, it would.

Q Do you see it on the voyage card?

A No, there is no mention of requesting shed space on this voyage card.

Q Do you conclude, therefore, that she did not

request pier and shed space?

A I do, yes.

BY MR. BOWLES:

Objection to that, at this time, you are only referring to what knowledge you have based on this card, is that correct?

BY THE WITNESS:

Correct.

BY MR. MALOOF:

Q I show you another document and ask you if you can identify, Captain?

A Yes, this is another of our documents. It is the Master's Declration outwards.

Q Does that refer to the SINGAPORE TRADER?

A It does, yes, and it shows the time she arrived at the berth and the time she sailed from it.

Q And what is the purpose of that document?

A Well, it gives us the check on the length of time which the vessel was alongside for billing purposes and it also shows the name of the agent and any cargo transaction which takes place, if any. It shows the draught forward and after,

too.

Q Would you mark this, Mr. Reporter, No. 2, Claimant's Kerr No. 2?

Captain, I show you a document which purports to be a map of the port area of Montreal, and I ask you if that is what it is? (HANDING)

A That is correct, that is one of our maps. The name is right on here, somewhere - Does it not say it right there? (INDICATING)

Yes, Port of Montreal, National Harbours Board.

Q And your association puts out this map? Is that right?

A Yes.

Q And what information does it map purport to give? Generally speaking?

A It shows the ship channel; it also shows all our sheds and open sections which are available for berthing the vessels.

Q It shows the piers?

A It shows the piers, the, that part which is

pinky-yellow shows the land area which belongs to the National Harbours Board - Outside of the yellow belongs to the City.

Q Now, in a legend, in the legend area in the right-hand corner it says January 1971.

A Yes.

Q Would this have been the same as at October 1971?

A There, with very minor differences, yes.

Q All right.

Mark this, please, No. 3.

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

Q Captain, assume that the SINGAPORE TRADER, when she was in Montreal, had about eight thousand (8,000) measured tons of cargo aboard; if she had, or through her agents or in any other way, made a request for berthing space and shed space for discharging that cargo, on October 13, 1971, would you have been able to accommodate her?

A Yes, we would.

Q How would you have done it?

KERR:

A We would have accommodated her at Shed 3 lower. Now, Shed 3 is only one floor, Shed 3 or Shed 11, lower floor.

Q And was there enough space at those sheds?

A If there wasn't enough space in - if there wasn't enough space in one of them, there certainly would have been in two, in both.

Q Are they covered sheds?

A Yes.

Q And the pier area is sufficient to accommodate a ship of this length with this draught?

A Yes, it is.

Q Was any request made?

A No request was made to me for a berth to discharge cargo.

BY MR. BOWLES:

Is that on the basis of your record there or your recollection?

BY THE WITNESS:

On the basis of my record and my recollection.

BY MR. MALOOF:

Q Would the request have been made to you?

KERR:

A It would have been - or it would have been made to my predecessor - I became berthing superintendent on the 1st of November, 1971. This was just immediately prior to that.

Q But you were there at the time?

A Oh, yes.

Q Those sheds served, are they served by rail?

A They are, yes, both.

Q Are they also served by trucking facilities?

A They are, yes.

Q Would you describe for us what you mean, again, by the daily rental piers and sheds?

A These are, daily rental sheds are sheds which we allocate on request to a steamship company or a steamship agent, to handle cargo from or to that shed and for which we charge a daily rental rate, X number of dollars a day for the length of time that that shed is being used.

Q Captain, Claimant's Kerr No. 3 for identification, would you take this pen and put a circle around sheds No. 3 and No. 11? Those are the numbers you referred to?

KERR:

A Yes, that is correct.

(THE WITNESS PLACES THE CIRCLES AS INDICATED)

Q Thank you.

Perhaps you will initial it as close as you can to those circles?

A (THE WITNESS SO DOES)

Q Thank you.

Captain Kerr, are you able to tell us what application for shed space was made by vessels to the Harbour Board between September 23rd and October 15, 1971?

A Ofihand, no. I could look up my records in the office for that.

Q All right.

All right, your witness.

BY MR. LOESBERG:

Your witness.

BY MR. BOWLES:

Go ahead.

BY MR. LOESBERG:

I have no questions at this time.

CROSS-EXAMINATION BY MR. BOWLES:

Q Captain, you mentioned the SINGAPORE TRADER could have berthed at berth 3 or 11. Are you referring to the date of October 13th?

A Yes.

Q And did that mean there were no other berths available?

A No, it does not mean that. I mean, these were empty sheds.

Q At this time?

A They were empty at that time.

Q I see. Did you have other empty sheds also?

A We have other empty sheds, daily rental sheds which had some cargo in, but these two that I mentioned were empty.

Q I see. You have been with the National Harbours Board for fourteen (14) years?

A Almost, yes.

Q Was all that time in Montreal?

A Yes.

Q I see. I see, and you are berthing superintendent at this time?

KERR:

A Right.

Q Where do you stand under the Harbour-master, then? Is you do?

A Well, well, I use my immediate boss, I report directly to the Harbour-master.

Q I see.

A I am directly responsible to the Harbour-master for all the berthing of all the vessels in the harbour.

Q I see, and who was your predecessor?

A Page, Captain Raymond Page.

Q Where is he now?

A He is still in the office but he is not in that job any more.

Q I see. Are you here as an official representative of the National Harbours Board?

A No, I am here because I was asked to come up and make a deposition.

Q I see. Are you under subpoena?

A No.

Q You appeared voluntarily?

A Yes.

KERR:

Q I suppose you are being paid to come here?

A I am not being paid to come here.

Q You are here on your own time?

A No, I am here on company's time.

Q I see.

Have you had any correspondence with Mr. Maloof concerning the subject of your deposition?

A No, none at all.

Q When did he first contact you?

A I was called by Mr. Tuft of Seikeman & Elliott at a quarter-past four yesterday afternoon.

Q I see. What were you asked to do?

A I was asked to come up here and make a deposition.

Q On what subject?

A On the SINGAPORE TRADER.

Q I see. Prior to your deposition, have you reviewed any documents, other than the three exhibits that have been volunteered?

A No.

Q Did you review any other records in your office pertaining to the shed space and so on?

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KERR:

A Yes, I did, we have a new list of vessels in port every day, and where they are located, and I found these and was able to tell that there were no ships in Shed 3 or 5 at the time in question -

Q Three (3) or 11, you mean?

A Three (3) or 11, plus the fact that our records show that there was no cargo in the sheds at that time.

Q I see.

A That is why I mentioned Sheds 3 and 11.

Q Did you have vessels at anchor at that time? Did you check your vessels' records to see that?

A No.

Q Would you have records that would show that?

A Oh, yes, our records would show any ships that anchor at noon, twelve o'clock noon every day.

Q Do you have any records to show whether Sheds 3 or 11 were scheduled to receive cargo at that time; in other words, that they may have been free on the 13th but would it have been scheduled to receive cargo, receive the vessel alongside

KERR:

on the 14th or 15th or 16th or something like that?

A No.

Q You have no records on that?

A No, it would not be - I certainly wouldn't be telling you that Sheds 3 and 11 were available if they had been given to somebody else.

Q I see, or if they were scheduled in the future to be given to someone else?

A If they were scheduled to be given to someone else, that would have been done through me or my immediate predecessor and we would know about it.

Q I see. Would you have a record on that in your office?

A We certainly would, yes.

Q Would you have that there now?

A No, as I say, they were notgiven to anybody.

Q When was the next time after October 13, 1971 that Sheds 3 or 11 were used?

A I don't know. I would have to look up our records for that.

Q I see. Then, considering the amount of cargo that was on board the SINGAPORE TRADER, Mr. Maloof mentioned about eight thousand (8,000) payable tons, what would you assume -

BY MR. MALOOF:

Measurement tons.

BY MR. BOWLES:

Q What does that mean?

A That it is bulk cargo, forty (40) cubic feet to a ton or something like that, isn't it, as opposed to weight tons.

Q I see, and were you aware that this was all bulk cargo with no pallets?

A No, I wasn't asked -

Q No, but Mr. Maloof's question asked about possibly putting this ship in.

A Well, as I say, I have been trying to establish that there was enough room for them -

Q I am trying to find out what information you are giving this opinion on, sir, that is all, on what basis you are giving the opinion.

A On available cubic space in the sheds.

KERR:

Q I see.

Did you make any estimate of how long it would take this vessel to discharge?

A No, I didn't, no.

Q I see.

A I had no way of doing that because I have nothing to do with the actual handling of cargo at all.

Q I understand that, but in your scheduling of the use of your sheds and pier space, do you consider how long a vessel may expect to be alongside?

A No. We allocate a ship, a shed to a ship on request to handle X number of tons of cargo; we don't put any deadline on it when it has to get off of there.

Q I see.

A And the ship owner wants to get that ship off there as soon as he can.

BY MR. MALOOF:

You charge by the day?

BY THE WITNESS:

We charge by the day.

BY MR. BOWLES:

I see.

Q Would you have a listing in your office of the number of ships handled at your facilities at any particular time?

BY MR. LOESBERG:

Which facilities?

BY MR. BOWLES:

Pier facilities.

BY THE WITNESS:

We have a list of all ships in the harbour every day and which ships or sheds or what sections they are.

BY MR. BOWLES:

Q Do you have also a list, say a monthly or yearly tabulation or something of that order?

A We know, we keep records of how many ships have arrived at the port up to twelve o'clock every day.

Q I see. Well, is that tabulated, though, at the end of the month; in other words, let's say at the end of October, 1971, could you say how many

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KERR:

ships had arrived to load or unload cargo at your spaces? Did you make -

A We could arrive at that - What we do know is how many ships have been in. As I said, whether it is to discharge cargo, I have no way of telling -

Q I see, well for the period of October 1971, November 1971, December 1971, did you have a higher than normal average number of ships in, at your berths during that period of time?

BY MR. LOESBERG:

Do you mean anchor berths?

BY MR. BOWLES:

No, pier space.

BY THE WITNESS:

Are you talking about the rental sections of all sheds?

BY MR. BOWLES:

All sheds.

BY THE WITNESS:

All sheds?

BY MR. BOWLES:

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KERR:

Yes.

BY THE WITNESS:

Well, I don't have any figures for the years, but it would seem to me probably it was a bit busier than normal.

I don't have any figures with me -

BY MR. BOWLES:

I see.

Q Are these figures available in your office?

A As I say, to tell how many ships are in the port every day for every year, we can go back over any number of years you like.

Q I see.

A To say how many ships were in the port at twelve o'clock.

Q Based on these listings for twelve o'clock?

A Yes.

Q This period of October 1971, you mentioned the unusual occurrence, the strike on the eastern coast of the United States? Is that correct, you were aware of that?

A Yes.

ANTHONY MARTIN

KERR:

Q And you also mentioned that there were ships passing through Montreal?

A Yes.

Q Or going past Montreal, going to and from the Lakes? Is that correct?

A Correct.

Q Were you aware of the situation that there were ships going into the Lakes to discharge cargo that would not normally do that?

BY MR. MALOOF:

Objection to the form of the question. I think this - I think you have posed something not proved in any way by way of facts.

BY MR. BOWLES:

Well, I am asking the witness to his knowledge -

BY MR. MALOOF:

I want to put my objection on the record. The witness may answer, Mr. Bowles.

BY THE WITNESS:

I am not concerned with why ships are going up the Seaway. I presume it is to discharge cargo but all we are concerned with is vessels

passing through our harbour.

BY MR. BOWLES:

Right.

Q Now, apart from the availability of shed space -

A Yes?

Q Do you have any information on the availability of the labour situation?

A No, I am afraid not, sir, no, I have nothing whatsoever to do with that.

Q When a vessel requested space at your berth, what documents, if any, of hers did you check?

A We don't check any, I don't check any documents at all. We ask if a ship request shed or an open section to handle cargo, we send them a daily rental form which the agent for that vessel fills up and sends it back to us.

Q I see. Do you get concerned at all with where that cargo is manifested for?

A No, in no way.

Q You were in the port of Montreal during the month of October? Is that correct?

A Oh, yes.

KERR:

Q And you are aware of the maritime situation in the port? Would that be correct?

A Right.

Q And you are aware to some extent of the labour situation in the port also? Is that correct?

A In way way? It has nothing to do, I have nothing to do with the labour situation -

Q Well, labour is working on your pier? Is that correct?

A Yes.

Q What union represents the stevedores or the longshoremen, excuse me?

A The -

Q At the sheds we are talking about now?

A The, what do you call it -

Q International Longshoremen's Association? Is that right?

A Yes.

Q Now, did you hear anything on the piers, what is your experience concerning whether or not -

BY MR. MALOOF:

I object.

BY MR. BOWLES:

Let me finish that question at least.

BY MR. MALOOF:

You may finish that illegal question.

BY MR. BOWLES:

Q What did you hear regarding the labour situation as to whether or not the ILA would work ships that had come from New York, for example, if any, did you hear?

BY MR. MALOOF:

Just a moment, Captain, please, I object to the form of the question on the ground that it is obviously hearsay, but we have come a long way and I think the witness can answer the question with my objection on the record.

BY THE WITNESS:

I don't have any way of coming into contact with what they would be saying on the wharf about the handling of cargo at all. All I am concerned with is the allocation of berths for the ship, to tie up and handle cargo, if necessary.

BY MR. BOWLES:

KERR:

I see.

Q Did you have any ships come to your berths that were turned away because of the labour situation? Do you recall?

A No, I don't recall. I wouldn't know myself anyway.

Q I see.

During the period of this strike, did your office have any correspondence of any kind with the local International Longshoremen's Union?

A Well, if it did, it would be a high level, so I really can't tell you that.

Q I see.

A This would be done from the port manager's level if at all.

Q I see. Do you have any correspondence with the ship agents or ship owners other than these requests for pier space?

A No, I don't.

Q I see.

During the period of the strike, did

you receive any directives from the National Harbours Board regarding the priority of scheduling various ships or cargoes?

A Well, this is a couple of years ago. I don't really remember too much about it -

Q You did receive some, though, didn't you?

A What?

Q Notices from the Harbour Board regarding priorities in scheduling of ships?

A Well, there is something entered into my mind about handling our own ships first, if I remember right, right? At this time, for Montreal, first -

Q Right.

A And after that I really don't know -

Q And didn't ships, let's say, diverted from the east coast of the United States come last in priority?

A I would assume so, yes, after our own ships had been taken care of.

Q What berth was the SINGAPORE TRADER sent to, to fit for the Seaway?

ANTHONY MARTIN

KERR:

A Shed 40.

Q Where is that on the chart?

A (WITNESS INDICATES)

Q Is there any particular reason why that shed was picked out?

A No.

Q Was there cargo in that shed at that time, do you know?

A These sheds were leased to Saguenay Shipping, so that ship went in there with the agreement of Saguenay Shipping.

Q I see, - just to go alongside -

A Not to handle cargo.

Q Right.

A Just to fit for the Seaway, which can be done at any berth.

(PASSAGE OFF THE RECORD)

BY MR. BOWLES:

Q What records, again, are down in your office concerning the use of your sheds and piers? You have a list on a daily basis of all the ships in the harbour? What else do you have?

A Well, that list shows where ships are and where they are tied up in the harbour, who the agent is, what the tonnage is, and that is about it.

Q All right.

Could we adjourn to your office to see that, to see those records? I think I can't go further on this cross-examination without seeing the general records.

BY MR. MALOOF:

I object to adjourning to any office at all. This is not a discovery deposition.

BY MR. BOWLES:

I object to that. It is a discovery deposition. It was initially set up as such.

BY MR. MALOOF:

It is an unfair request to drag us all around the City of Montreal. The questions are very irrelevant. I have been very patient and objected but still allowed the witness to answer questions on all kinds of hearsay and I don't think we should be dragged out in the cold, all around the City.

Are you going to ask any more questions?

BY MR. BOWLES:

Not at this point.

BY MR. MALOOF:

That is the only real issue. This is strictly a fishing expedition.

BY MR. LOESBERG:

What did you say, Captain, when - will you finish?

BY THE WITNESS:

Well, I was under the impression that I was going to be asked to confirm that the ship could have been discharged here, if he had asked to do so.

BY MR. LOESBERG:

And you didn't bring the rest of the records because, of course, the subject of the testimony was the records you brought? Is that right?

BY THE WITNESS:

Right.

CROSS-EXAMINATION BY MR. LOESBERG:

Q Were you talking of fitting out for the Seaway?

A Yes.

Q And that could have beendone at the two sheds designated on this exhibit here?

A Yes.

Q That is Exhibit 2 or 3, which is it?

BY MR. MALOOF:

Exhibit 3.

BY MR. LOESBERG:

Q As I understand from my own experience, fitting means fitting fair leads -

A And landing booms.

Q How long was that ship -

A Twelve (12) years, about.

Q And could she have worked some of the holds at the same time in discharging the cargo?

A She could have done, yes.

Q Sure. I have no further questions.

BY MR. MALOOF:

Are you all done?

BY MR. LOESBERG:

Yes, I am finished.

BY MR. BOWLES:

KERR:

harass us.

BY MR. BOWLES:

Q Did you tell Mr. Maloof that you had these with you?

A No, but he never asked me, though.

Q All right.

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

I demand that Mr. Bowles should mark those documents for identification as SINGAPORE TRADER's exhibit.

(PASSAGE OFF THE RECORD)

BY MR. MALOOF:

We hand to Mr. Bowles, at his request, a document which Captain Kerr looked at, off the record while I was talking to him, and I assume that Mr. Bowles wishes to mark this document for identification.

(HANDING TO MR. BOWLES)

(PASSAGE OFF THE RECORD)

BY MR. BOWLES:

You mentioned on prior questioning that you knew

when a ship was entering. How do you know that? Is there any record on that?

BY THE WITNESS:

Oh, yes, we have pier supervisors. I think we have five of them at the moment, whose duty it is to visit all sections and sheds in the harbour and they check the contents daily.

BY MR. BOWLES:

Is there any record showing, from these pier superintendents or otherwise, what was in pier 3 or shed 3 or shed 11?

BY THE WITNESS:

Yes.

BY MR. BOWLES:

On these dates in question?

BY THE WITNESS:

Yes.

BY MR. BOWLES:

Or to show that they were empty?

BY THE WITNESS:

Yes.

BY MR. BOWLES:

Do you have that record here with you now?

BY THE WITNESS:

Yes.

BY MR. BOWLES:

You have it here with you now?

BY THE WITNESS:

Yes.

BY MR. BOWLES:

Could I see it, please?

(PASSAGE OFF THE RECORD)

BY THE WITNESS:

On this date in question - (INDICATING) shed 11, that is the date it came in, shed 11, lower, is clear except for three bays of gear.

BY MR. MALOOF:

And how about shed 3 now?

BY THE WITNESS:

All right, shed 3.

(PASSAGE OFF THE RECORD)

BY THE WITNESS:

Shed 3, lower, clear and clean.

BY MR. MALOOF:

Now, would you show those two pages to the Reporter, who will mark those.

BY THE WITNESS:

Yes.

BY MR. MALOOF:

Show the Reporter those two pages. He will make those Claimant Kerr 4 and 5.

BY MR. BOWLES:

Q You had mentioned recalling directives or a directive from the National Harbours Board. How do we get a copy of that?

A Well, you would have to talk to the Harbourmaster himself.

Q Yes? You don't have access to those records?

A I don't recall if it is an actual document or not or whether it is word of mouth but he certainly would be able to tell you.

Q Yes?

There was at least one, you recall?

A What?

Q Directive of some sort concerning priorities?

A Yes, I recall that Canadian ships were to be

KERR:

given priority - the ships which were destined to come to Montreal, in the first place.

Q Right.

If you are contacted a week or more in advance of when a ship arrives, can you guarantee a berthing space to be available?

A Well, no, we usually like, we don't like to give away a berth before the ship gets in the River or gets pretty close, because ships can be delayed by a reason of fog or weather and then some other ships, suppose I give away this shed to X ship, right, and he is delayed and another ship comes in ahead of him, and he has got no place to go, right away that ship has - So, in other words, we like to wait till we can pretty well see -

Q Right, you like to wait till the ship arrives?

A Well, not arrives, but at least is in the River, within a day's run from Montreal.

Q Do you recall, back in the beginning of October, 1971, that you received any inquiries from any steamship agents concerning the future berthing

ANTHONY MARTIN
OFFICIAL COURT REPORTER
SUPERIOR COURT - MONTREAL

of vessels?

A No.

Q The local agents would all know your practice, that you would have to wait till the ship gets here to arrange for berth?

A Right.

Q And at this time, referring to the beginning of October, according to the records that have been marked here, Claimant's Exhibits 7 in a bundle, showing the daily shed and berth usage, they were pretty near full at that time? Is that correct?

BY MR. LOESBERG:

I object to the form of the question.

BY MR. MALOOF:

Objection to the form but you may answer.

BY THE WITNESS:

No, not full, but more berths, we could have accommodated more ships but not necessarily at sheds, right?

BY MR. BOWLES:

Q Were all of your sheds except 3 and 11 being used,

in some way?

A Well, for instance, B-4 and B-5 were not, there was no ship there. You see, we have got B-1, 2, 3, 4, 5, 6, but there was no ship there -

Q I see.

A Sheds 2, 3, 4, and 5 are not mentioned because there was no ship there, right? Six (6), 7, 8 - shed 9, 10 and 11 are not mentioned. This is only a list to show which berths were occupied by what ships.

Q Right.

(PASSAGE OFF THE RECORD)

BY MR. BOWLES:

I have no further questions at this time - except, I still would like to get a copy of the directive you were referring to.

Q How do we do that? Do you have to go down to the office?

A No, we can call the Harbour-master -

BY MR. MALOOF:

Well, are you willing to give a copy of that directive to Mr. Bowles?

BY THE WITNESS:

I have no control. It is not up to me to say whether the document or not - I don't have the documents anyway.

BY MR. LOESBERG:

So, if you want it, go ahead and get it, if such a thing exists.

BY MR. BOWLES:

I have no further questions at this time.

RE-EXAMINATION BY MR. MALOOF:

Q Captain, you said that there were also some sheds which were partially with cargo?

A Yes.

Q And they could have been used to handle some more cargo, could they not?

A Oh, yes.

Q This is besides Nos. 3 and 11?

A Right.

Q Now, these documents that we have marked for identification, the -

A Yes, but this is -

BY MR. LOESBERG:

KERR:

That is all right, we are not going to take it.

BY MR. MALOOF:

Q What is the name of it?

A Daily reports of ships at berth.

Q Daily reports of sheds and berths?

A Daily reports of -

Q Is this a document kept in the ordinary course of business by the Harbour Board?

A We have a different form which we use, but in these days we used -

Q As of October, 1971 that was kept in the ordinary course of business by the Harbours Board?

A Oh, yes, every day.

Q Now, is that also true of this document, what is it called again?

A It is called the shed - shedding terminal facilities, as at August 1st, 1972.

Q Is that a document kept in the ordinary course of business by the Harbours Board?

A Oh, yes, there was one in 1971 and there was one for 1970.

Q And are these documents marked Claimant's Bundle totalling seven pages?

A Yes.

Q Are those documents kept in the ordinary course of business by the Harbours Board?

A Every day, every day.

Q And Nos. 1 and 2, are those documents kept in the ordinary course of business by the Harbours Board?

A Oh, yes, every day, for every vessel.

Q This map of Montreal Harbour was prepared in the ordinary course of business by the Harbours Board?

A Oh, yes, yes.

C No further questions.

BY MR. LOESBERG:

I have one question which I was interested in:

Q Besides the piers and sheds that we have been talking about with respect to the Harbour Board, as I understand it, in the Port of Montreal, there are certain steamship companies that have leased terminal facilities?

KERR:

A Correct.

Q And you don't know anything about those? In other words, you don't know whether or not they have space to lease or sub-lease to another company? Another shipping company? You can't testify about that? Is that right?

A Well, this list here gives all the sheds, you see.

Q The leased sheds too?

A Yes, but it doesn't say that that company would be prepared to lease that shed.

Q They might or might not?

A Right, they might have space for one of their own vessels expected to arrive -

Q Is it fair to say if they had space, in order to gain money, they might sub-lease it to another company?

A It is quite possible, yes.

Q No further questions.

BY MR. MALOOF:

No further questions.

BY MR. BOWLES:

LOUIS COTE, DOCK SUPERINTENDENT, NATIONAL HARBOURS BOARD, PORT OF QUEBEC (CL. EX. B)

On this twenty-third day of January in the year of Our Lord nineteen hundred and seventy-four, personally came and appeared

LOUIS COTE

who, having been duly sworn, doth depose and say as follows:

BY THE OFFICIAL COURT REPORTER:

Q What is your name, please?

A Louis Côté.

Q Your occupation?

A Dock superintendent.

Q Your address?

A 2671 Vitre Street, Quebec.

Q Any apartment?

A No.

Q Your age?

A Forty-nine (49).

EXAMINATION BY MR. DAVID L. MALOOF:

Q Mr. Cote, would you tell us your position and the organization for which you work?

A Well, I am dock superintendent for the National Harbours Board, and the National Harbours Board

COTE:

is a Crown society that supplies, say, harbour facilities, to handle cargo.

Q And are you based in any special city or port?

A In the Port of Quebec.

Q Did you have the same position in October of 1971, sir?

A I did.

Q Do you recall October 1971, in October 1971, that there was a strike of the longshoremen along the east coast of the United States?

A I do.

Q Mr. Cote, I will show you a drawing and ask you, ask you if you can identify it for us, please? (HANDING)

A Yes, that is a plan showing Wolfe Cove Terminal at the Port of Quebec.

Q And is that drawing accurate the way it was in October of 1971?

A Yes, exactly the same as it is today. There is no change at all.

Q Thank you.

Mr. Reporter, would you mark this,

COTE:

please, as Claimant's Cote No. 1? - for identification?

Mr. Cote, I show you another drawing, and ask you if you can identify that for us, please?

(HANDING)

A Yes, this is a plan showing our facilities at Louise Basin and Beauport Flats Terminal.

Q In Quebec?

A In Quebec City.

Q And is that an accurate plan as of October 1971?

A Yes, sir.

Q Would you mark this No. 2, please?

Mr. Cote, in October of 1971, for example, the first two weeks, assume that a ship called the SINGAPORE TRADER with a length of four hundred and forty-one (441) feet, I believe she was a C-2 - Is that correct, Mr. Bowles?

BY MR. BOWLES:

Yes, C-2.

BY MR. MALOOF:

COTE:

Q And with a draught of approximately forward seven feet, six inches (7'6"), aft twenty-one feet, three inches (21'3"), roughly, these are the draughts of Montreal, but I assume it was pretty close, assume that that ship came to Quebec and asked for a berth for the purpose of discharging approximately eight thousand (8,000) measured tons of cargo, would the Port of Quebec have had the berthing space and the covered shed space to accommodate the SINGAPORE TRADER?

A As far as the draught is concerned, this is no problem at all, because at all those berths or most of them, there are no less than thirty-five feet (35') of water. Some of them have thirty-seven feet (37') of water, and as far as the sheds are concerned, we would have had the sheds to take care of that cargo.

Q Would you have had sufficient shed space without any doubt, covered shed space for that cargo?

A No doubts at all.

Q For example, what berth, looking at Claimant's Cote No. 1, would you have put the SINGAPORE

COTE:

TRADER at? - or looking at No. 2. Either one.

A Well, the vessel could have been accommodated, you see, at different berths. No. 1, it was shed No. 1 at Wolfe Cove was a suitable berth. So is shed 3, and 4. Now, if we go to Louise Basin, shed 26 was a suitable berth, too.

Q Were those sheds empty at around October the 12th, 1971?

A Well, I prepared myself a list of the ships that called at those berths during the whole month of October, and I guess you can see by yourself that there was sufficient room to take care of this vessel.

Q You are looking at a document now -

A I prepared it myself.

Q And does that document disclose that there was plenty of room -

A Yes.

Q - to handle the SINGAPORE TRADER as I have described it?

A Yes, sir.

COTE:

Q Would you mark this, please - It will be No. 3.

Mr. Cote, can you tell us whether Quebec Harbour is serviced by railroad lines?

A Yes, it is served by two major railroads, the Canadian Pacific and the Canadian National Railway.

Q Is it serviced by trucking companies?

A Well, a large quantity of trucking companies, there are, that have permits to go to the States and bonded carriers.

Q So, trucking companies with U.S. permits -

A Yes.

Q - also service Quebec?

A Exactly.

Q Are you familiar with the dues charged ships by the Harbour Board for this service?

A Yes.

Q What is the relation of those dues with other ports along the Lakes?

A Well, first of all, you see, the harbour dues is the same, in all its ports, the dockage charges

COTE:

are all the same in the NMB ports, except that at Quebec there is no rental charges for the ships, and this in the normal time of handling.

Q Your witness.

CROSS-EXAMINATION BY MR. BOWLES:

Q Mr. Cote, referring to Claimant's Cote No. 3, the list of vessels - the list of vessels in the Port of Quebec in October 1971, did you prepare this from your own records?

A Yes, from the register book.

Q You didn't bring those books with you today?

A No, well, it is big book, that's it - (INDICATING)

Q I see. You didn't make any copies of the pages for that day?

A Well, we haven't got the machine to take the copies, as, as large as this.

Q Other than the documents introduced here as Claimant's Exhibit Nos. 1, 2 and 3, did you bring any other documents with you today?

A No, sir.

Q Other than the register book and these documents

COTE:

in front of you, did you review any other documents in preparation for the deposition?

A Yes, I checked if I received an application for berth. I checked through the record if I could find one, and I could not.

Q Did you look at any other records or documents?

A No, nothing else. This is the only thing I throught I had to look through.

Q Was that the only thing you were asked to look through by Mr. Maloof or his associates?

A But, well, see, for the purpose I thought I was called here, I don't think it is necessary for me to look at the, through any other records.

Q I see.

In answering Mr. Maloof's question as to whether sheds and so on were available, and berths, did you consider the labour situation at all?

A The labour situation is none of my business.

Q I see.

Were you aware of the local union's position regarding hot cargo or hot ships at that

COTE:

time?

A You see, when a steamship line is asking for a berth, I answered, "Look, as far as the berth is concerned". I don't refer to anything else.

Q I see.

A You see, because we have no control whatsoever over the labour.

Q You just give the ship a berth and let him worry about whether or not he can get labour for the ship? Is that right?

A Yes.

Q In the summer of 1971, in August, isn't it correct that the National Harbours Board formed a group called the Marine Cargo Expediting Group, of which you were a member or consulted on?

A Exactly.

Q What was the purpose of that Marine Cargo Expediting Group?

A It was to take care of all cargo, no matter of the destination or where it was coming from, it

COTE:

was to take care of the cargo in the port.

Q And did this Group set up a list of priorities as to which cargo would be handled first and which would be handled last?

A You see, that was questioned at the time, it was to get in touch with the railroads and the trucking companies, to be sure they would have sufficient equipment to remove the cargo from the docks.

Q In fact, probably the most important factor in the matter of the priority was whether the cargo could be removed from the docks within a reasonable time? Is that correct? Or in a short time after landing?

A Yes, because you see, we were expecting a lot of cargo, and this is why we were preparing ourselves to take care of it.

Q And didn't the ports get, including Quebec, get a lot of cargo, other ports did?

BY MR. MALOOF:

Objection.

BY MR. BOWLES:

COTE:

Q Well, to your knowledge, did other ports?

A I have no idea at all.

Q I see.

A You see, because we, the Port of Montreal is a kind of an independent port, so is Three Rivers, and we have no jurisdiction, say, outside of the harbour limits.

Q Well, you are all members of the National Harbours Board? Is that right?

A Yes.

Q You are employees of the National Harbours Board?

A Employees of the National Harbours Board.

Q You are not aware of what is going on in the other ports?

A No, and we don't even have any records, except once a year, which is public.

Q I see.

Who is Captain Ligdermot?

A Captain Ligdermot was the harbour-master in Montreal at that time.

Q And wasn't he also a member of this Marine Cargo

COTE:

Expediting Group?

A Yes, if my memory serves me well, yes.

Q Do you know Captain Alexander Kerr?

A I, I knew that he is in Montreal.

Q Would Captain Ligdermot be Captain Kerr's superior?

A To my knowledge, yes.

Q And concerning the priority system, if a port were congested, a decision would have to be made by someone on the Expediting Group?

A Yes.

Q As to which ship would be loaded or discharged first? Is that correct?

BY MR. MALOOF:

Excuse me, please, objection to form. The testimony is that the Port of Quebec was not congested so this puts this question in the nature of academic curiosity.

BY MR. BOWLES:

Q Will you please answer the question?

BY MR. MALOOF:

You may answer the question, Mr. Cote?

BY THE WITNESS:

512a

COTE:

You see, we were not congested, so even if, if the Port of Montreal had been congested, they wouldn't have to tell me at all.

BY MR. BOWLES:

Q No, no, I am not asking that question. I s[illegible] -

BY MR. MALOOF:

Montreal wasn't congested either.

BY MR. BOWLES:

I object to your testifying.

BY MR. MALOOF:

And there was plenty or room in Quebec.

BY MR. BOWLES:

The question is, if a situation developed where there were congestion, someone on the Marine Cargo Expediting Group would have to make a decision as to the priority of which ship is going to be discharged first? Is that correct?

BY MR. MALOOF:

Objection as to the form.

BY THE WITNESS:

If -

ANTHONY MARTIN

COTE:

BY MR. BOWLES:

Say "if".

BY THE WITNESS:

The purpose of that Cargo Expediting Group, you see, was to try to establish a policy in case, in case the port had been congested all of this group would have gathered together to make a decision, to make a decision.

BY MR. BOWLES:

Q But in preparation for that, they did set out a list of priorities also, didn't they?

A Inthe case of congestion, you see, a regular cargo would have been handled first.

Q You mean cargo destined for Canada? Is that correct?

A Exactly.

Q And cargo destined only for the United States would be handled last? Wasn't that correct?

A Last in case of congestion.

Q Right.

If you receive a/request for space at your port, how far in advance can you

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COTE:

guarantee that space to be available to a ship-owner?

A You see, the rule is to ask for a berth a week ahead of time or a week prior to the arrival of the vessel.

Q Right, and can you guarantee that the berth will be available a week ahead of time? - or is it just for scheduling purposes?

A You see, in normal times there is no problem at all because we have more facilities than we need or actually use.

Q At the time of the strike, were you actively engaged in your job, during October of 1971 and so on?

A Yes, I was holding that job since the 1st of October, 1968.

Q I see.

During the time of the strike, were you aware that ships were bypassing Canadian ports and going to discharge in the Lakes, including ports such as Detroit?

BY MR. MALOOF:

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COTE:

Objection to form, unproved allegations.

The witness may answer, if you know.

BY THE WITNESS:

I control, say, the vessels that are calling into Quebec. The vessels that are bypassing Quebec, I never know where they are going. You see, like in Quebec all the ships going on the Seaway are passing Quebec. I have no idea at all where they are going.

BY MR. BOWLES:

I have no further questions at this time.

BY MR. MALOOF:

I have just one.

RE-EXAMINATION BY MR. MALOOF:

Q Mr. Côté, you did then check your records to see whether the SINGAPORE TRADER did request berthing space?

A Right.

Q And did you find any request for berthing space?

A No, I didn't find any.

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COTE:

Q It she had requested berthing space, would it be in your records?

A Yes.

Q No further questions.

Thank you very much, Mr. Coté.

AND FURTHER DEPONENT SAITH NOT.

I, the undersigned, an Official Court Reporter, do hereby certify that the foregoing is a true and faithful transcript of the testimony of the above-named witness as by me taken,

And I have signed,

Anthony Martin.

Anthony Martin.
ANTHONY MARTIN
OFFICIAL COURT REPORTER
SUPERIOR COURT - MONTREAL

before the loading commenced?

A After we left Saigon we asked the cargo men to clean the cargo spaces, and after we arrived at Hong Kong, we have shore people to clean the spaces again.

Q Did you inspect any of the cargo compartments before commencing the loading of this vessel?

A No.

Q Did you receive any reports from any of your officers concerning the conditions of the cargo compartments?

A I received oral report from this chief mate.

Q And what was the contents of his report?

MR. LOESBERG: Objection. Hearsay.

A Should I answer it?

Q Yes.

A The cargo spaces were clean and dry.

Q How much cargo was loaded, approximately, do you recall?

A The weight about 1,400 tons.

Q And will you describe this cargo that you received, generally, what type of cargo was it?

A Very light, mostly plastic flowers, Christmas trees, transistor radios, very light cargo.

booklet herein marked Yang Exhibit No. 24 for identification, this date.)

Q When did the vessel leave Montreal, Captain?

A October 13, 1971.

Q And where did the vessel proceed toward after leaving Montreal?

A Proceeded for Detroit, Michigan.

Q Captain, going back a step, upon and after leaving Hong Kong, and during the course of the voyage, did you have any occasions to use the ship's radar?

A Yes.

Q Can you tell us how many times or with what frequency?

A After we departed Hong Kong, when we come near land, we used the radar.

Q Are there any specific occasions that you can recall using the ship's radar?

A South of Taiwan, we are around here, this should be on this particular area.

Q Would you describe that in words, no-one would understand where "here" is.

A When the ship went around south tip of Taiwan,

Q And who is the head man there?

A Which?

Q That Chinese outfit, the Chinese company you mentioned, Chinese Overseas Navigation Co.?

A The boss you mean?

Q Yes, who is the boss?

A Mr. Lin.

Q And where does he live?

A (No response.)

Q New York?

A No. Taipei, Taiwan.

Q He goes between Taipei and Hong Kong?

A Yes.

Q And how long did Mr. Linown the vessel called the SINGAPORE TRADER?

A I don't know if Mr. Lin own it or not.

Q Well, when did his company or any of his companies buy that ship, from whom did they buy the ship?

A I don't know.

Q You don't know?

A No.

Q When you went on board the SINGAPORE TRADER, was it then owned or operated by Chinese Navigation Overseas Company?

Q You don't?

A No.

MR. LOESBERG: Do you have any with you?

MR. MARTOWSKI: I have got one.

Q Captain, did you sign the bills of lading?

A No.

Q Who signed them, and you can look at the bill of lading if you want to?

A It says here.

Q And what does it state?

A China Marine Investment Company, Ltd., C. S. Lui, Business Department Manager.

Q Now, who is the China Investment Company, Ltd. -- who is the China Marine Investment Company, Ltd.?

A China Marine Investment Co., Ltd.?

Q Yes. The name on top of the bill of lading?

A That's the company name. The president of the company is Mr. Lin.

Q Do you know who is president of the Singapore Navigation Company?

A No.

Q When you go to Hong Kong what office do you go to to see somebody in the company that you work for?

A China Marine Investment Company, Ltd.

Q How about in Taipei or Kao Hsiung?

A Taiwan?

Q When you go to visit the company in any port in Taiwan, what company office do you see? Is that also the China Marine Investment Company, Ltd.?

A Yes, they have two China Overseas Navigation Overseas, Ltd., and Chinese Marine Investment Company, Ltd.

Q What's the other one, the other name besides China Marine Investment --

A China Overseas Navigation Company, Ltd.

Q The same office?

A Yes.

Q The same people?

A Yes -- I don't know if they are the same or not. I just go in the office there.

Q You don't know who they work for?

A I don't know who belongs to which company.

Q Who is the president of the China Overseas Investment Company?

A You mean the boss?

MR. BOWLES: Chinese Overseas Investment Company --

A You mean the boss?

Q Yes. It's Mr. Lin, isn't it?

A Yes. I don't know if he is the president or --

Q He is the boss?

A Yes, I would say the boss.

Q Who put this stamp here, and I am pointing to the stamp in the box?

A This?

Q Yes, Captain.

A I don't know.

Q You saw that before, didn't you?

A No.

Q You never saw it before today?

A No.

Q Didn't you ever see the bills of lading before?

A Yes.

Q And you never saw that stamp?

A No.

Q Before the ship left Hong Kong to come to the United States, did you discuss with Mr. Lin or anybody else about there might be a longshoreman strike?

A No.

Q They don't tell you that?

A No.

A Gannett Freighting, Inc.

Q Now, when your ship got to New York, there was a longshoremen's strike, right?

A After we --

Q After, sure.

A Yes.

Q And did you receive any instructions from Gannett or CONAVCO at any time to go some other place to discharge the rest of the cargo?

A Yes.

Q And who told you?

A Mr. Herlihy.

Q And what did he say?

A The ship sail for Detroit to discharge balance of cargo.

Q Was there any discussion about going to some other port like Montreal or Quebec?

A No.

Q No?

A No.

Q He said "go to Detroit"?

A Yes.

Q Do you know if Mr. Herlihy said to notify the consignees, or you told him to notify the consignees that

the ship was going to Detroit?

A I didn't notify the consignees.

Q Was there any talk about notifying them between you and Mr. Herlihy?

A No.

Q Now, getting back to the time you went aboard the ship, was there some trouble at some time, some trouble with the telemotor, wasn't there?

A No.

Q Never any trouble with the telemotor?

A No.

Q Take your logbook and look at August 22.

A No.

Q Look in the engine log.

A Steering gear, automatic coil is burning.

Q Did you know about that before today?

MR. BOWLES: Just a moment.

Q Did you know about that --

MR. BOWLES: Just a minute, I said.

Q Did you know about that before today?

MR. BOWLES: Just a minute.

MR. LOESBERG: What are you interrupting my cross-examination for?

MR. BOWLES: Ask him what it is first.

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SUPERIOR COURT - MONTREAL

Q You said the error of the gyro was between what and what?

A Point five, point two, something like that.

Q How could you figure point two?

A No -- the figure, you come from the tables. There was not a whole degrees.

Q Part of a degree?

A Yes. But on the repeater --

Q That's what I am talking about.

A Sometime you get half degrees, mostly a half -- how can you tell point two or three.

Q I can't.

When you say error, was that east or west?

A I can't tell.

Q Or sometimes east and sometimes west?

A I cannot remember that.

Q You don't remember?

A No.

Q Whether it was sometimes east or sometimes west?

A No, I cannot remember.

Q Most of the goods or the cargo that the ship carried was Christmas goods, wasn't it, like Christmas trees?

A Yes.

Q A lot of Christmas goods?

A I know there were Christmas trees and --

Q Christmas balls?

A I don't know that.

Q Toys?

A Toys I know; and plastic flowers.

Q What day is Christmas, do you know?

A The 25th.

Q Right.

A Of December.

Q Was there any charter party between China Marine Investment Company, Ltd. and Singapore Navigation Company?

A You mean aboard my ship?

Q Yes.

A No.

Q Do you know if there is a charter party?

A No. Between the China Marine Investment or China Overseas Navigation Company?

Q Yes, between anybody.

A Well, we have a charter party for the loading.

Q You do?

A Yes.

properly, can the ship still be steered by a man?

A Yes. By a man or station a man on the wheel.

Q So if the automatic steering gear does not work properly, is it correct --

A No, not work properly.

Q Listen to the question, please.

A Okay.

Q So if the automatic steering gear does not work properly, what do you do with it?

A We use -- we ask the quartermaster to steer the ship.

Q What do you do with the automatic steering gear first?

A We turn it off.

Q And once you turn it off, does it have any effect on the steering whatsoever?

A (No response.)

Q Once you turn off the automatic steering gear, the automatic pilot, does it have any effect whatsoever on the steering of the ship?

A Nothing at all.

Q Captain, you mentioned on the cross-examination that the reason for leaving New York to go to Detroit was that you were given some instructions

by Mr. Herlihy?

A Yes.

Q Do you know where those instructions came from?

A I don't know.

Q Would Mr. Herlihy be in a position to give orders for the movement of the ship?

A I get instructions from Mr. Herlihy.

Q Do you know where he gets those instructions, if from anyone else?

A I don't know.

Q What exactly did Mr. Herlihy say to you?

A He told me the ship should sail to Detroit to discharge the balance of the cargo. Then I prepare everything. Mostly find out the chart we need, and ordered the charts through Gannett.

Q My question is, concerning whether Mr. Herlihy received instructions from CONAVCO or China Marine or anyone else concerning the movement of the ship?

A I don't know.

Q You have mentioned that the pilot, Mr. Keogh, boarded the ship at 1955 hours?

A Yes.

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CERTIFICATE OF SERVICE
OF BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS
AND JOINT APPENDIX

We hereby certify that two copies of Brief on Behalf of Plaintiffs-Appellants and one copy of the Joint Appendix were this day served by hand on the following:

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